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Contents

Federal Register
Vol. 81, No. 163
Tuesday, August 23, 2016

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57583–57586

Agricultural Marketing Service
PROPOSED RULES
Beef Promotion and Research, 57495–57497
Increased Assessment Rates:
  Apricots Grown in Designated Counties in Washington, 57493–57495

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Housing Service

Air Force Department
NOTICES
Meetings:
  Air Force Scientific Advisory Board, 57570–57571

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Federal Firearms License, 57616–57617
  Notification of Change of Mailing or Premise Address, 57615–57616

Antitrust Division
NOTICES
Proposed Final Judgments:
  United States of America v. Charter Communications, Inc., et al., 57617–57620

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57569–57570

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57587–57589

Centers for Medicare & Medicaid Services
PROPOSED RULES
Inappropriate Steering of Individuals Eligible for or Receiving Medicare and Medicaid Benefits to Individual Market Plans, 57554–57558

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57589
Low-Income Home Energy Assistance Program:
  State Median Income Estimates for Federal Fiscal Year 2017, 57589–57591

Coast Guard
RULES
Safety Zones:
  Upper Mississippi River, St. Louis, MO, 57459–57461
Transportation Worker Identification Credential; Reader Requirements, 57652–57713
PROPOSED RULES
Safety Zones:
  Columbia River, Sand Island, WA, 57507–57509
NOTICES
Waterway Suitability Assessments:
  Expansion of Liquefied Natural Gas Facility, Ingleside, TX, 57599–57600

Commerce Department
See Economic Development Administration
See First Responder Network Authority
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Alzheimer's and Dementia Program Data Reporting Tool, 57591–57592
  Protection and Advocacy Annual Program Performance Report and Statement of Goals and Priorities, 57592–57593

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57570

Defense Department
See Air Force Department
NOTICES
Arms Sales, 57571–57578
TRICARE:
  Fiscal Year 2017 Continued Health Care Benefit Program; Quarterly Premium Update, 57578–57579

Economic Development Administration
NOTICES
Trade Adjustment Assistance Eligibility; Petitions, 57561

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Study of Title I Schoolwide and Targeted Assistance Programs, 57579

Employment and Training Administration
NOTICES
Worker Adjustment Assistance Eligibility; Determinations, 57627–57629

Worker Adjustment Assistance Eligibility; Determinations:
  Exal Corp. Including On-Site Leased Workers from Alliance Industrial Solutions and Ryan Alternative Staffing, Youngstown, OH, 57625
  Mesabi Radial Tire Co., 57626–57627
Worker Adjustment Assistance Eligibility; Investigations, 57625–57626

Energy Department
See Energy Efficiency and Renewable Energy Office

Energy Efficiency and Renewable Energy Office
NOTICES
Request for Project Submissions:

  Call For U.S.-China Energy Performance Contracting Pilot Projects to be Recognized at the 7th Annual U.S.-China Energy Efficiency Forum, 57579–57580

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:

  Indiana; Shipbuilding Antifoulant Coatings, 57469–57473
  Virginia; Minor New Source Review, Nonroad Engines, 57466–57469
  Wisconsin; Kenosha County 2008 8-Hour Ozone Nonattainment Area Reasonable Further Progress Plan, 57463–57466
Petitions:
  Brunner Island Steam Electric Station; Deadline Extension, 57461–57463
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Florida; Hillsborough Area; SO2 Attainment Demonstration, 57522–57531
  Florida; Nassau Area; SO2 Attainment Demonstration, 57535–57544
  Georgia; Infrastructure Requirements for the 2012 PM2.5 National Ambient Air Quality Standard, 57544–57554
  Indiana; Shipbuilding Antifoulant Coatings, 57534–57535
  Maine; New Hampshire; Rhode Island; Vermont; Interstate Transport of Air Pollution, 57519–57522
  South Carolina; Infrastructure Requirements for the 2012 PM2.5 National Ambient Air Quality Standard, 57509–57519
  Virginia; Adoption of Control Techniques Guidelines for Control of Volatile Organic Compound Emissions, 57531–57534
  Virginia; Minor New Source Review, Nonroad Engines, 57534
  Wisconsin; Kenosha County, 2008 8-Hour Ozone Nonattainment Area Reasonable Further Progress Plan, 57535
NOTICES
Meetings:
  Science and Information Subcommittee, 57580

Federal Aviation Administration
RULES
Airworthiness Directives:

  All Hot Air Balloons, 57449–57451
  Rolls-Royce Deutschland Ltd and Co KG Turbofan Engines, 57447–57449

Federal Communications Commission
RULES
Closed Captioning of Video Programming:

  Telecommunications for the Deaf and Hard of Hearing, Inc., 57473–57489
NOTICES
Meetings:
  North American Numbering Council, 57580–57581

Federal Highway Administration
RULES

Right-of-Way and Real Estate, 57716–57741
NOTICES
Environmental Impact Statements; Availability, etc.:
  State Route 30, Cache County, UT, 57645–57646

Federal Housing Finance Agency
PROPOSED RULES

Federal Home Loan Bank New Business Activities, 57499–57505

First Responder Network Authority
NOTICES
Meetings:

  First Responder Network Authority Board and Finance Committee, 57561–57562

Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:

  Management of Federal Agency Disbursements, 57649–57650

Foreign-Trade Zones Board
NOTICES
Production Activities:

  Max Home, LLC; Foreign-Trade Zone 158, Vicksburg and Jackson, MS, 57562
Subzone Approvals:
  Next Level Apparel, Ashford, AL, 57562

Forest Service
NOTICES
Meetings:

  Chippewa National Forest Resource Advisory Committee, 57559
  Rogue and Umpqua Resource Advisory Committee, 57559–57560

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:

  USA.gov and All Related Subdomains, 57581–57582

Gulf Coast Ecosystem Restoration Council
NOTICES

Draft Update to the Comprehensive Plan, 57582–57583

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Community Living Administration
See National Institutes of Health

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57593–57597

Homeland Security Department

See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection
RULES
Civil Monetary Penalty Adjustments for Inflation; Correction, 57442

Housing and Urban Development Department

PROPOSED RULES
Native American Housing Assistance and Self-Determination Act:
  Negotiated Rulemaking Committee Ninth Meeting, 57506–57507
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Affirmatively Furthering Fair Housing Local Government Assessment Tool, 57601–57610
Meetings:
  Manufactured Housing Consensus Committee, 57611
Order of Succession for Office of General Counsel, 57610–57611

Industry and Security Bureau

RULES
Additions and Removals of Certain Persons and Modification of Certain Entries to the Entity List, 57451–57456
PROPOSED RULES
License Exceptions:
  Temporary Exports to Mexico, 57505–57506

Interior Department

See Land Management Bureau
See National Park Service

Internal Revenue Service

RULES
Arbitrage Guidance for Tax-Exempt Bonds:
  Correction, 57458–57459

International Trade Administration

NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China, 57562–57563

International Trade Commission

NOTICES
Andean Trade Preference Act:
  Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, 57613–57614
Complaints:
  Certain Sleep-Disordered Breathing Treatment Mask Systems and Components Thereof, 57614–57615

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Approval as a Nonprofit Budget and Credit Counseling Agency, 57622
  Application for Approval as a Provider of a Personal Financial Management Instructional Course, 57623–57624
  Claims of U.S. Nationals Referred to the Foreign Claims Settlement Commission by the Department of State, 57621–57622
  Quality of Service Survey, 57623
Consent Decrees under CERCLA, 57624–57625
Meetings:
  National Domestic Communications Assistance Centers Executive Advisory Board, 57620–57621

Labor Department

See Employment and Training Administration

Land Management Bureau

NOTICES
Environmental Assessments; Availability, etc.:
  Coeur d'Alene Resource Management Plan; Amendments, 57611–57612

National Highway Traffic Safety Administration

NOTICES
Amendments to Highway Safety Program Guidelines, 57646–57649

National Institute of Standards and Technology

NOTICES
Meetings:
  Genome in a Bottle Consortium; Workshop, 57564–57565
  Visiting Committee on Advanced Technology, 57563–57564

National Institutes of Health

NOTICES
Meetings:
  Eunice Kennedy Shriver National Institute of Child Health and Human Development, 57597
  National Cancer Advisory Board; Correction, 57597–57598
  National Institute of Dental and Craniofacial Research, 57597–57598
  National Institute of Mental Health, 57599
  National Institute of Nursing Research, 57598–57599
  Office of the Director, 57598

National Oceanic and Atmospheric Administration

RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
  Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 57491–57492
  Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 57491
Fisheries Off West Coast States:
  Coastal Pelagic Species Fisheries; Annual Specifications, 57489–57490
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  South Pacific Tuna Act, 57565
Programmatic Environmental Impact and Related Procedures
  Pacific Island Fisheries; Aquaculture, 57567–57569

- Requests for Nominations:
  - Advisory Panel for Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops, 57565–57567

National Park Service

NOTICES

- Requests for Nominations:
  - Na Hoa Pili O Kaloko-Honokohau National Historical Park Advisory Commission, 57612–57613

National Telecommunications and Information Administration

NOTICES

- Meetings:
  - First Responder Network Authority Board and Finance Committee, 57561–57562

Nuclear Regulatory Commission

RULES

- List of Approved Spent Fuel Storage Casks:
  - Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2, 57442–57446

PROPOSED RULES

- List of Approved Spent Fuel Storage Casks:
  - Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2, 57497–57499

NOTICES

- License Application; Renewals:
  - Virginia Electric and Power Company; North Anna Power Station Independent Spent Fuel Storage Installation, 57629–57632

Postal Service

NOTICES

- Product Changes:
  - Priority Mail and First-Class Package Service Negotiated Service Agreement, 57632
  - Priority Mail Express and Priority Mail Negotiated Service Agreement, 57632

Rural Housing Service

RULES

- Civil Monetary Penalties, 57439–57442

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57560–57561

Securities and Exchange Commission

NOTICES

- Applications:
  - FS Global Credit Opportunities Fund, et al.;, 57636–57639
- Meetings; Sunshine Act, 57634–57635
- Self-Regulatory Organizations; Proposed Rule Changes:
  - ICE Clear Europe Limited, 57635–57636
  - NASDAQ Stock Market LLC, 57641–57642
  - New York Stock Exchange LLC, 57642–57644
  - NYSE Arca, Inc., 57632–57634
  - NYSE MKT LLC, 57639–57640, 57642

Small Business Administration

NOTICES

- Surrender of License of Small Business Investment Company, 57644

State Department

NOTICES

- Culturally Significant Objects Imported for Exhibition:
  - In the Tower: Barbara Kruger, 57645
- Meetings:
  - Shipping Coordinating Committee, 57645
- Presidential Permits:
  - Union Pacific Railroad Co. to Operate and Maintain the Brownsville West Rail Bypass International Bridge on the U.S.-Mexico Border West of Brownsville, TX, 57644–57645

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department

See Fiscal Service
See Internal Revenue Service

U.S. Citizenship and Immigration Services

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57600–57601

U.S. Customs and Border Protection

RULES

- Importations; Prohibitions:
  - Jadeite or Rubies Mined or Extracted from Burma and Articles of Jewelry Containing Jadeite or Rubies Mined or Extracted from Burma, 57456–57458

Veterans Affairs Department

NOTICES

- Meetings:
  - MyVA Advisory Committee, 57650

Separate Parts In This Issue

Part II

Homeland Security Department, Coast Guard, 57652–57713

Part III

Transportation Department, Federal Highway Administration, 57716–57741

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
3560....57439
Proposed Rules:
922....57493
1260....57495

8 CFR
274a....57442

10 CFR
72....57442
Proposed Rules:
72....57497

12 CFR
Proposed Rules:
1272....57499

14 CFR
39 (2 documents)....57447, 57449

15 CFR
744....57451
Proposed Rules:
740....57505

19 CFR
12....57456
163....57456

23 CFR
635....57716
710....57716
810....57716

24 CFR
Proposed Rules:
Ch. IX....57506

26 CFR
1 (2 documents)....57458, 57459

33 CFR
101....57652
103....57652
104....57652
105....57652
106....57652
165....57459
Proposed Rules:
165....57507

40 CFR
52 (4 documents)....57461, 57463, 57466, 57469
Proposed Rules:
52 (9 documents)....57509, 57519, 57522, 57531, 57534, 57535, 57544

42 CFR
Proposed Rules:
402....57554
420....57554
455....57554

47 CFR
79....57473

50 CFR
660....57489
679 (2 documents)....57491

Rules and Regulations

Federal Register
Vol. 81, No. 163
Tuesday, August 23, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575–AC93

Civil Monetary Penalties

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency) is implementing its civil monetary penalty provision. Currently, the Agency is limited to severe actions, such as acceleration and foreclosure, as a remedy for non-monetary compliance violations, actions that may not be in the best interest of the government. New Civil Monetary Penalties regulations will enable the Agency to target the non-monetary default issues and elicit compliance by the borrower without such a drastic step as foreclosure. By implementing procedures for Civil Monetary Penalties, the Agency will be provided an important tool to enforce compliance with the regulations.

DATES: This rule is effective September 22, 2016. However, there will be an implementation period for this rule that will allow the Agency to ensure that proper guidance is disseminated. The implementation date is December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Stephanie White, Director, Multi-Family Housing Portfolio Management Division, Rural Housing Service, STOP 0782—Room 1263S, 1400 Independence Avenue SW., Washington, DC 20250–0782, Telephone: (202) 720–1615.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Authority

The civil monetary penalty provision is authorized under section 543(b) of the Housing Act of 1949, as amended (42 U.S.C. 1490s(b)).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970. RHS has determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with the States is not required.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with "Federal mandates" that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any 1-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The revisions in this rulemaking for 7 CFR part 3560 are subject to the Paperwork Reduction Act package with the assigned OMB control number of 0575–0189. No changes would impact that package.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under Section 514 program and Section 516 program (10.405); Section 515 program (10.415); Section 521 (10.427); and Section 542 (10.448).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov* to request such consultation.

Executive Order 12372, Intergovernmental Review of Federal Programs

This final rule is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan and grant in a manner delineated in 7 CFR part 3015 subpart V.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identification (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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To file a discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *fax:* (202) 690–7442; or

(3) *email: program.intake@usda.gov.*

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I. Background

Section 543(b) of the Housing Act of 1949 as amended (hereinafter the Act) (42 U.S.C. 1490s(b)) states for 5 different types of violations, "the Secretary may, after notice and opportunity for a hearing, impose a civil monetary penalty (CMP) against any individual or entity, including its owners, officers, directors, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of the Act or its regulations."

In the proposed rule published in the **Federal Register** on January 4, 2013 (78 FR 672) RHS proposed to implement two civil monetary penalty provisions. First, RHS proposed to amend its regulations to create a new section for imposing civil monetary penalties under the authority of 42 U.S.C. 1490s (section 543 of the Housing Act of 1949, as amended (Act)) (Housing Act CMP). Second, RHS proposed to adopt the USDA civil monetary penalty provisions for the Program Fraud Civil Remedies Act of 1986 (PFCRA) in a revision to an existing regulation (PFCRA CMP). In the proposed rule, RHS addressed the following issues for CMP:

1. Procedures for the determination of the civil monetary penalties;
2. Procedures for the administrative hearing;
3. Establishing fines; and
4. Procedures for the collection of fines.

In the final rule, Multi-Family Housing (MFH) will set out procedures to use the USDA Administrative Law Judges' office to conduct the hearings for the civil monetary penalty program. The Administrative Laws Judges conduct similar hearings for other USDA agencies. The Administrative Law Judges' regulations allow within its jurisdiction, "other adjudicatory proceedings in which the complaint instituting the proceeding so provides with the concurrence of the Assistant Secretary for Administration." See 7 CFR 1.131(b)(6) Rural Housing Service (RHS) received concurrence in conducting MFH's civil monetary penalty hearings through the Administrative Law Judges' office.

The Agency expects about 50 CMP cases annually.

II. Summary of Comments and Responses

On January 4, 2013 (78 FR 672), the Agency published a proposed rule for Civil Monetary Penalties. A thirty-day comment period that ended February 4, 2013, was provided. Fifty-one comments were received from eleven stakeholders, including housing associations, housing advocates, and individuals. RHS is also including five comments relating to civil monetary penalties received from an interim rule titled "Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs", which was published on November 26, 2004 (69 FR 69032–69176). Of the comments received, two comments were deemed not relevant to the rule, as the comments were not related to the CMP proposed rule.

The Agency will adopt the following comments:

Duplication and vagueness of CMP/PFCRA: Twenty-one comments mentioned that the proposed rule was broad and vague. Comments expressed concern about the duplication and overlap of existing rules created by the proposed rule. Several commenters requested that the Agency explain the need for Program Fraud Civil Remedies Act (PFCRA) in the proposed rule. The Agency has reviewed the comments and agrees that the inclusion of PFCRA provisions in the proposed rule created repetition and overlap, so they have been removed. Accordingly, the Agency has determined that 7 CFR part 1, subpart L, Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986, will be replaced with references to 7 CFR part 1, subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes.

The majority of borrowers and management agents within the multifamily portfolio comply with Agency regulations and procedures and will not be affected by this rule. We estimate that less than five percent of the multifamily portfolio will be affected by the CMP rule.

CMP Process: Ten comments expressed concerns about the CMP process. Those concerns included:

- Two comments concerning the timeliness and use of the Attorney General. The concern was that the use of the United States Attorney's office could take years delaying completion of any civil monetary penalty against the individual or entity.
- One commenter raised a concern about the role of the Office of General Counsel (OGC) and its impact on the length of time for completing a CMP case and whether it had adequate staffing to handle such matters.
- One comment requested clearer guidance on the role and process of the Fraud Claims Officer, and the designation of the reviewing official.
- One comment objected to the pre-penalty notices warning that a penalty may be coming if the Agency did not receive adequate performance.
- Five comments were received that raised concerns about the complicated methodology of the process, ambiguous deadlines, and the standards for maintaining a property.
- Another comment suggested that the rule clearly limit which portions of Part 1 apply so, for example, the Agency is clear that it is not seeking to take on the Office of Inspector General (OIG) investigation powers, but is still providing full and adequate discovery and hearing procedures.
- Another commenter suggested an initial process using the State Director or Program Director.
- The Agency considered all of the comments above and changed the rule by enlisting the Office of Administrative Law Judges to administer civil monetary hearings to address the concerns of due process. References to the Fraud Office, of which there is no equivalent in USDA have been removed. No specific pre-penalty notice will be provided. Instead the Agency will use servicing letters in the existing guidance provided in the Serving Handbook. The Administrative Law Judges conduct similar hearings for other U.S. Department of Agriculture agencies. The Administrative Law Judges' regulations allow within its jurisdiction, "other adjudicatory proceedings in which the complaint instituting the proceeding so provides with the concurrence of the Assistant Secretary for Administration." See 7 CFR 1.131(b)(6). The Agency process will be similar to that used by Investigative and Enforcement Services of the Animal and Plant Health Inspection Service (APHIS). Borrowers will have an opportunity to resolve the findings or deficiencies by working with the State Director and Agency staff prior through its regulatory loan servicing procedures prior to a CMP hearing. As with other loan servicing actions, the Agency will complete its loan servicing pursuant to 7 CFR part 3560 of the Borrower's loan account before pursuing civil monetary penalties. Pursuant to 7 CFR 3560.456(b), the Agency will make a determination on whether to proceed with an acceleration or seek CMPs. The Office of General Counsel will review the cases to ensure legal sufficiency as well as represent the Agency on any cases that they recommend to move forward. Once forwarded, the timing of the process will be incumbent on the caseload of the Office of the Administrative Law Judges.

The Agency will amend § 3560.461(b)(2) adding references to 7 CFR part 1 subpart H-Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes. In response to comments concerning duplicity, due process and procedural concerns the Agency determined it will use its authority in section 543(b) Housing Act authority and this subpart rather than 7 CFR part 1, subpart L.

CMP Fees: Three commenters expressed concerns about the fee structure and its reasonableness. As described in the proposed rule, the CMP fees will be assessed in accordance with 7 CFR part 3, subpart I. The Administrative Law Judge will use the criteria in the final rule and the requirements in section 3.91(b)(8) to determine the fees. The Agency believes that the fees set in the final rule will be reasonable. With the threshold of the fees independently established in USDA regulation and the assessment of the CMP fees imposed by the Administrative Law Judges, the Agency believes these measures eliminate any potential RHS subjectivity or bias.

- *Failure to Disclose:* One commenter requested that the Agency add a section to the rule that specifies the failure to disclose proper identity-of-interest information on site managers and contractors as a cause to impose CMP. We agree this should be included and have adopted the comment. This requirement is addressed in § 3560.461(b)(1)(iii) entitled, "Failing to submit information requested by the Agency in a timely manner."

The Agency will not adopt the following comments:

Non-profits: Six commenters were concerned about the negative impact of the rule on non-profit borrowers. Some requested exempt status or a 24-month grace period for implementation when a non-profit obtains a property through a transfer and assumption.

The Agency does not see a need to adopt the comment because all borrowers, including non-profits, are required to adhere to the requirements of 7 CFR part 3560. In addition, MFH will work with the non-profits to assist them in bringing the properties into compliance with MFH regulations. As a result, MFH does not think it is necessary to implement a 24 month grace period.

Liability Concerns: One commenter expressed concerns about liability in the case of a Limited Liability Corporation (LLC) and whether the tenant could be liable. It is ultimately the borrower's responsibility to remain compliant with the program regulations. False information provided by the tenant resulting in unauthorized benefits may be pursued under 7 CFR part 3560, subpart O—Unauthorized Assistance. The Agency will determine borrower liability on a case-by-case basis and as the regulation and law allows. A Tenant may be liable under the CMP and is subject to the requirements of this rule.

Lack of Resources: One commenter requested that the rule clarify that civil monetary penalties will not be sought or assessed under circumstances where the primary cause of a failure to properly manage or maintain a project results from a lack of available funds where the borrower has requested rental increases or additional loans or grants in order to maintain and repair the project, but such requests have been denied. The Agency understands the commenter's concern. The Agency is choosing not to adopt the comment because the Agency is confident it can work with borrowers on tools that are available, which may include rent increases in accordance with 7 CFR part 3560, subpart E and other servicing options available under subpart J.

List of Subjects in 7 CFR Part 3560

Aged, Loan programs—Agriculture, Loan programs—Housing and Community Development, Low and moderate income housing, Public housing, Rent subsidies.

For the reasons set forth in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations is amended as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

■ 2. Amend § 3560.461 by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 3560.461 Enforcement provisions.

* * * * *

(b) * * *

(2) *Amount.* Civil penalties shall be assessed in accordance with 7 CFR part 3, subpart I. In determining the amount of a civil monetary penalty under this section, the Agency must take into consideration:

(i) The gravity of the offense;

(ii) Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(iii) Any injury to tenants;

(iv) Any injury to the public;

(v) Any benefits received by the violator as a result of the violation;

(vi) Deterrence of future violations; and

(vii) Such other factors as the Agency may establish by regulation.

* * * * *

(4) Hearings under this part shall be conducted in accordance with the procedures applicable to hearings in accordance with 7 CFR part 1, subpart H.

* * * * *

Dated: July 25, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–19954 Filed 8–22–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[Docket No. DHS–2016–0034]

RIN 1601–AA80

Civil Monetary Penalty Adjustments for Inflation; Correction

AGENCY: Department of Homeland Security.

ACTION: Interim final rule; correction.

SUMMARY: The Department of Homeland Security (DHS) is correcting an interim final rule that published in the **Federal Register** on July 1, 2016 (81 FR 42987). The rule amended DHS regulations to adjust DHS and component civil monetary penalties for inflation. DHS calculated the adjusted penalties according to the statutory formula in the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which was signed into law on November 2, 2015. DHS is correcting an error in the amendatory instruction related to one regulatory section.

DATES: This correction is effective on August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Megan Westmoreland, Attorney-Advisor, Office of the General Counsel, U.S. Department of Homeland Security. Phone: 202–447–4384.

SUPPLEMENTARY INFORMATION: In FR Doc. 2016–15673, appearing on page 42987 in the **Federal Register** of Friday, July 1, 2016, DHS makes the following correction:

§ 274a.10 [Corrected]

■ 1. On page 43002, in the first column, in part 274a Control of Employment of Aliens, in amendment 7, DHS corrects the instruction "In § 274a.10, revise paragraphs (b)(1)(ii)(A),(B),(C), and (b)(1)(iii)(2) to read as follows:" to read "In § 274a.10, revise paragraphs (b)(1)(ii)(A),(B),(C), and (b)(2) to read as follows:"

Dated: August 11, 2016.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

[FR Doc. 2016–19672 Filed 8–22–16; 8:45 am]

BILLING CODE 9111–28–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0103]

RIN 3150–AJ75

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1032 for the Holtec International (Holtec) HI–STORM Flood/Wind (FW) Multipurpose Canister (MPC) Storage System. Amendment No. 2 adds new fuel types to the HI–STORM FW MPC Storage System, includes new criticality calculations, updates an existing fuel type description, and includes changes previously incorporated in Amendment No. 0 to CoC No. 1032, Revision 1. In addition, Amendment No. 2 makes several other changes as described in Section IV, "Discussion of Changes," in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The direct final rule is effective November 7, 2016, unless significant adverse comments are received by September 22, 2016. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342 or email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments
II. Procedural Background
III. Background
IV. Discussion of Changes
V. Voluntary Consensus Standards
VI. Agreement State Compatibility
VII. Plain Writing
VIII. Environmental Assessment and Finding of No Significant Environmental Impact
IX. Paperwork Reduction Act Statement
X. Regulatory Flexibility Certification
XI. Regulatory Analysis
XII. Backfitting and Issue Finality
XIII. Congressional Review Act
XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0103 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0103.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0103 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1032 and does not include other aspects of the Holtec HI–STORM FW MPC Storage System design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on November 7, 2016. However, if the NRC receives significant adverse comments on this direct final rule by September 22, 2016, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that "the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule dated March 28, 2011 (76 FR 17019), that approved the Holtec HI–STORM FW MPC Storage System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, "List of approved spent fuel storage casks," as CoC No. 1032.

IV. Discussion of Changes

By letter dated March 31, 2015, Holtec submitted a request to the NRC to amend CoC No. 1032 (ADAMS Accession No. ML15092A130). Holtec supplemented its request on the following dates: April 9, 2015 (ADAMS Accession No. ML15114A423), June 19, 2015 (ADAMS Accession No. ML15170A433), and August 14, 2015 (ADAMS Accession No. ML15233A038). Amendment No. 2 includes the following changes:

- Adds new fuel types to the HI–STORM FW MPC Storage System;
- Includes criticality calculations performed in support of the request for Amendment No. 2 to CoC No. 1040 for the HI–STORM Underground Maximum Canister Storage System;
- Updates an existing fuel type description; and
- Includes changes previously incorporated in Amendment No. 0 to CoC No. 1032, Revision 1.

In addition to the changes requested by Holtec, the NRC staff proposed to revise CoC Condition No. 8 to provide additional clarity and guidance. Holtec agreed to this change in correspondence dated February 29, 2016 (ADAMS Accession No. ML16061A410). Therefore, Amendment No. 2 includes the revision to CoC Condition No. 8.

As documented in the Preliminary Safety Evaluation Report (PSER) (ADAMS Accession No. ML16054A624), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the applicable limits of 10 CFR part 20, "Standards for Protection Against Radiation." Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the March 28, 2011, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

This direct final rule revises the Holtec International HI–STORM FW MPC Storage System listing in 10 CFR 72.214 by adding Amendment No. 2 to CoC No. 1032. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the PSER.

The amended Holtec HI–STORM FW MPC Storage System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210, "General license issued," may load spent nuclear fuel into Holtec HI–STORM FW MPC Storage System casks that meet the criteria of Amendment No. 2 to CoC No. 1032 under 10 CFR 72.212, "Conditions of general license issued under § 72.210."

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec HI–STORM FW MPC Storage System design listed in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the Holtec HI–STORM FW MPC Storage System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to CoC No. 1032. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the CoC for the Holtec HI–STORM FW MPC Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 2 adds new fuel types to the HI–STORM FW MPC Storage System, includes new criticality calculations, updates an existing fuel type description, includes changes previously submitted in Amendment No. 0 to CoC No. 1032 Revision 1, and revises CoC Condition No. 8 to provide additional clarity and guidance.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 2 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

Holtec HI–STORM FW MPC Storage System casks are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an Independent Spent Fuel Storage Installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in the PSER for this amendment, which is available in ADAMS under Accession No. ML16054A624.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 2 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into Holtec HI–STORM FW MPC Storage System casks in accordance with the changes described in proposed Amendment No. 2 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, an interested licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Because licensees could still receive approval for use of this cask through a different and more burdensome administrative process, environmental impacts of the proposed action would be the same as or less than the no-action alternative.

E. Alternative Use of Resources

Approval of Amendment No. 2 to CoC No. 1032 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, "List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2" will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements, and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in casks with designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On March 28, 2011 (76 FR 17019), the NRC issued a direct final rule that approved the Holtec HI–STORM FW MPC Storage System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214, as CoC No. 1032.

By letter dated March 31, 2015 (ADAMS Accession No. ML15092A130), and as supplemented on April 9, 2015 (ADAMS Accession No. ML15114A423), June 19, 2015 (ADAMS Accession No. ML15170A433), and August 14, 2015 (ADAMS Accession No. ML15233A038), Holtec submitted an application to amend the Holtec HI–STORM FW MPC Storage System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into Holtec HI–STORM FW MPC Storage System casks under the changes described in Amendment No. 2 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Issuance of this direct final rule is consistent with previous NRC actions. Further, as documented in the PSER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1032 for the Holtec HI–STORM FW MPC Storage System, as currently listed in 10 CFR 72.214, "List of Approved Spent Fuel Storage Casks." Amendment No. 2 adds new fuel types to the HI–STORM FW MPC Storage System, includes new criticality calculations, updates an existing fuel type description, includes changes previously incorporated in Amendment No. 0 to CoC No. 1032, Revision 1, and revises CoC Condition No. 8 to provide additional clarity and guidance.

Amendment No. 2 to CoC No. 1032 for the Holtec HI–STORM FW MPC Storage System was initiated by Holtec and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 2 applies only to new casks fabricated and used under Amendment No. 2. These changes do not affect existing users of the Holtec HI–STORM FW MPC Storage System, and the current Amendment No. 1 continues to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 2 this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 2 to CoC No. 1032 does not constitute backfitting under 10 CFR 72.62 or 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

XIII. Congressional Review Act

The Office of Management and Budget has not found this to be a major rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
Letter and License Application	ML15092A130
Supplement Letter	ML15114A423
Package with the Transmittal and Request for Supplemental Information Responses Supporting HI–STORM FW CoC No. 1032, Amendment No. 2.	ML15170A433
Supplement to HI–STORM FW CoC No. 1032, Amendment 2	ML15233A038
Proposed CoC No. 1032, Amendment No. 2	ML16054A625
Proposed CoC No. 1032, Amendment No. 2—Appendix A	ML16054A628
Proposed CoC No. 1032, Amendment No. 2—Technical Specifications, Appendix B	ML16054A627
CoC No. 1032, Amendment No. 2—Preliminary Safety Evaluation Report	ML16054A624

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0103. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0103); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011, superseded by Amendment Number 0, Revision 1, on April 25, 2016.

Amendment Number 0, Revision 1, Effective Date: April 25, 2016.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

Amendment Number 1, Revision 1, Effective Date: June 2, 2015.

Amendment Number 2 Effective Date: November 7, 2016.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 2016.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2016–20090 Filed 8–22–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD; Amendment 39–18614; AD 2016–17–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2006–18–14 for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines. AD 2006–18–14 required calculating and re-establishing the cyclic life of stage 1 high-pressure turbine (HPT) disks, part number (P/N) JR32013 and P/N JR33838, and stage 1 low-pressure turbine (LPT) disk, P/N JR32318A. In addition, this AD requires re-calculating the cyclic life, and would impose a reduced cyclic life of stage 1 HPT disk, P/N JR32013. This AD was prompted by RRD review of the cyclic life limit of parts affected by AD 2006–18–14 and the RRD conclusion that the stage 1 HPT disk, P/N JR32013, requires further cyclic life limit reduction. We are issuing this AD to prevent failure of stage 1 HPT disks, P/N JR32013 and P/N JR33838, and stage 1 LPT disk, P/N JR32318A, uncontained disk release and damage to the airplane.

DATES: This AD is effective September 27, 2016. The Director of the Federal Register approved the incorporation by reference a certain publication listed in this AD as of September 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG; Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49–0–33–7086–1064; fax: 49–0–33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2006–25513.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2006–25513; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–18–14, Amendment 39–14753 (71 FR 52988, September 8, 2006), (''AD 2006–18–14''). AD 2006–18–14 applied to the specified products. The NPRM published in the **Federal Register** on March 11, 2016 (81 FR 12841). The NPRM proposed to require calculating and re-establishing the cyclic life of stage 1 HPT disks, P/N JR32013 and P/N JR33838, and stage 1 LPT disk, P/N JR32318A. The NPRM also proposed to require removing from service, using a drawdown schedule, those stage 1 HPT disks and stage 1 LPT disks operated under Tay 650–15 engine flight plan profiles A, B, C, or D; or operated under the Tay 651–54 engine datum flight profile, at reduced cyclic life limits found in the RRD Time Limits Manual (TLM) T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, dated September 15, 2014 and T–TAY–5RR, Chapter 05–10–01, dated September 15, 2014.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Changes to Related Service Information Under 1 CFR Part 51

We removed Alert Non-Modification Service Bulletin (NMSB) No. TAY–72–A1821, Revision 1, dated March 26, 2015 from Related Service Information under 1 CFR part 51, which is not incorporated by reference in this AD.

We added the RRD TLM T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, dated September 15, 2014.

Request To Change Compliance

RRD requests that the cyclic life limits for the HPT stage 1 disk, P/N JR33838, installed in RRD Tay 650–15 and Tay 651–54 engines to be changed in this AD to match the life limits found in the RRD TLM T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, dated September 15, 2014 and the RRD TLM T–TAY–5RR, Chapter 05–10–01, dated September 15, 2014. RRD updated their lifing analysis for the HPT stage 1 disk, P/N JR33838 and their new analysis justified an increased cyclic life limit for the HPT stage 1 disk, P/N JR33838 installed in the RRD Tay 650–15 and Tay 651–54 engines for certain flight profiles. These life increases were reflected in the applicable service bulletin and the TLM and the FAA did not have an opportunity to mandate the increase in the cyclic life limits via AD until now. The FAA previously addressed the increase in the life limits via a global AMOC.

We agree. The FAA accepts RRD's new lifing analysis. We changed the cyclic life limits in paragraphs (e)(3)(i)(B), (C), and (D) of this AD for the HPT stage 1 disk, P/N JR33838, installed in RRD Tay 650–15 engines to 21,000 flight cycles since new (FCSN), 18,000 FCSN, and 14,250 FCSN for flight profiles B, C, and D, respectively. We also changed the cyclic life limit in paragraph (e)(3)(i)(E) of this AD for the HPT stage 1 disk, P/N JR33838, installed in RRD Tay 651–54 engines to 14,250 FCSN for any flight profile.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

RRD TLM T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, dated September 15, 2014, contains information on re-calculating the cyclic life. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

RRD TLM T–TAY–5RR, Chapter 05–10–01, dated September 15, 2014 provides the new, reduced cyclic life limits for RRD Tay 651–54 engines operated under any engine flight plan profile.

RRD Alert Non-Modification Service Bulletin TAY–72–A1821, Revision 1, dated March 26, 2015, provides reduced cyclic life limits for RRD Tay 650–15 and RRD Tay 651–54 engines operated under various affected flight plan profiles.

Costs of Compliance

We estimate that this AD affects 25 engines installed on airplanes of U.S. registry. We also estimate that it would take about 0.5 hours per engine to comply with this AD. The average labor rate is $85 per hour. The pro-rated life limit reduction cost is about $23,053 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $577,388.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–18–14, Amendment 39–14753 (71 FR 52988, September 8, 2006), ("AD 2006–18–14"), and adding the following new AD:

2016–17–01 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–18614; Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD.

(a) Effective Date

This AD is effective September 27, 2016.

(b) Affected ADs

This AD supersedes AD 2006–18–14.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co (RRD) KG Tay 650–15 and Tay 651–54 turbofan engines with stage 1 high-pressure turbine (HPT) disks, part number (P/N) JR32013 or P/N JR33838, or stage 1 low-pressure turbine (LPT) disks, P/N JR32318A, installed.

(d) Unsafe Condition

This AD was prompted by RRD review of the cyclic life limit of parts affected by AD 2006–18–14 and the RRD conclusion that the stage 1 HPT disk, P/N JR32013, requires further cyclic life limit reduction. We are issuing this AD to prevent failure of stage 1 HPT disks, P/N JR32013 and P/N JR33838, and stage 1 LPT disk, P/N JR32318A, which could result in an uncontained engine failure and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Re-calculate the cyclic life of stage 1 HPT disks, P/N JR32013, as follows:

(i) If a stage 1 HPT disk, P/N JR32013, was ever operated under a different engine flight plan profile than the engine flight plan profile operated on the last flight, or was ever installed and operated in a different engine model, do the following:

(A) Within 30 days after the effective date of this AD, re-calculate the cyclic life for each stage 1 HPT disk, P/N JR32013. Use the RRD Time Limits Manual (TLM) T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, Task 05–10–01–800–000, Subtask 05–10–01–860–036, paragraph 1(E) or (1)(F), dated September 15, 2014 to re-calculate the cyclic life.

(B) Reserved.

(ii) If you change your flight plan profile or install a stage 1 HPT disk, P/N JR32013 or P/N JR33838, or stage 1 LPT disk, P/N JR32318A, into a different engine model after the effective date of this AD, re-calculate the cyclic life within 30 days of making the change. Use the RRD TLM T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, Task 05–10–01–800–000, Subtask 05–10–01–860–036, paragraph 1(E) or (1)(F), dated September 15, 2014 to re-calculate the cyclic life.

(2) For engines with a stage 1 HPT disk, P/N JR32013, installed, do the following:

(i) Remove from service any stage 1 HPT disk, P/N JR32013, within 100 flight cycles after the effective date of this AD or before exceeding the new, reduced cyclic life limits specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(E) of this AD, whichever occurs later, as follows:

(A) For RRD Tay 650–15 engines operated under engine flight plan profile A, the new, reduced cyclic life limit is 18,900 flight cycles-since-new (FCSN).

(B) For RRD Tay 650–15 engines operated under engine flight plan profile B, the new, reduced cyclic life limit is 15,500 FCSN.

(C) For RRD Tay 650–15 engines operated under engine flight plan profile C, the new, reduced cyclic life limit is 11,500 FCSN.

(D) For RRD Tay 650–15 engines operated under engine flight plan profile D, the new, reduced cyclic life limit is 9,300 FCSN.

(E) For RRD Tay 651–54 engines operated under any engine flight plan profile, the new, reduced cyclic life limit is 10,873 FCSN.

(ii) Reserved.

(3) For engines with a stage 1 HPT disk, P/N JR33838, or stage 1 LPT disk, P/N JR32318A, installed, do the following:

(i) Remove from service any stage 1 HPT disk, P/N JR33838, or stage 1 LPT disk, P/N JR32318A, before exceeding the cyclic life limits specified in paragraphs (e)(3)(i)(A) through (e)(3)(i)(E) of this AD, as follows:

(A) For RRD Tay 650–15 engines operated under engine flight plan profile A, the cyclic life limit for stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, is 23,000 FCSN.

(B) For RRD Tay 650–15 engines operated under engine flight plan profile B, the cyclic life limit for stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, is 21,000 FCSN.

(C) For RRD Tay 650–15 engines operated under engine flight plan profile C, the cyclic life limit for stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, is 18,000 FCSN.

(D) For RRD Tay 650–15 engines operated under engine flight plan profile D, the cyclic life limit for stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, is 14,250 FCSN.

(E) For RRD Tay 651–54 engines operated under any engine flight plan profile, the cyclic life limit for stage 1 HPT disk, P/N JR33838, is 14,250 FCSN and the cyclic life limit for stage 1 LPT disk, P/N JR32318A, is 20,000 FCSN.

(ii) Reserved.

(f) Installation Prohibition

After the effective date of this AD, do not install any part identified in paragraph (e) of this AD into any engine, or return any engine to service with any part identified in paragraph (e) of this AD, installed, if the part exceeds the cyclic life limit specified in paragraphs (e)(2) and (e)(3) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, AD 2015–0056, dated March 31, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2006–25513.

(3) Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin No. TAY–72–A1821, Revision 1, dated March 26, 2015, which is not incorporated by reference in this AD, can be obtained from Rolls-Royce Deutschland Ltd & Co KG, using the contact information in paragraph (i)(3) of this AD.

(4) RRD TLM T–TAY–5RR, Chapter 05–10–01, dated September 15, 2014.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce Deutschland Ltd & Co KG, Time Limits Manual T–TAY–3RR, Chapter 05, Time Limits, Subject 05–10–01, dated September 15, 2014.

(ii) Reserved.

(3) For Rolls-Royce Deutschland Ltd & Co KG service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49–0–33–7086–1064; fax: 49–0–33–7086–3276.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 16, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–20081 Filed 8–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8989; Directorate Identifier 2016–CE–025–AD; Amendment 39–18617; AD 2016–17–04]

RIN 2120–AA64

Airworthiness Directives; All Hot Air Balloons

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all hot air balloons to determine if BALÓNY KUBÍČEK spol. s r.o. Model Kubíček burners equipped with fuel hoses made of "EGEFLEX" material are installed. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as propane leaks found on burners equipped with fuel hoses made of EGEFLEX material. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective August 29, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 29, 2016.

We must receive comments on this AD by October 7, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact BALÓNY KUBÍČEK spol. s r.o., Jarní 2a, 614 00 Brno, Czech Republic, telephone: +420 545 422 620; fax: +420 545 422 621; email: *info@kubicekballons.cz;* Internet: *http://www.kubicekballoons.eu.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–8989.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8989; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2016–0151, dated July 26, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for hot air balloons with Balóny Kubíček spol. s.r.o. Model Kubíček burners equipped with fuel hoses made of "EGEFLEX" material. The MCAI states:

> Three propane leaks were reported in the recent past on a burner manufactured by Balóny Kubíček spol. s.r.o., equipped with the fuel hoses made of hose material "EGEFLEX".
>
> This condition, if not detected and corrected, could result in a fire, damaging the balloon and its envelope, ultimately leading to an emergency landing, with consequent injury to balloon occupants and persons on the ground.
>
> To address this potential unsafe condition, Balóny Kubíček spol. s.r.o. (the hose assemblies' manufacturer) published Service Bulletin (SB) N° BB/50, BB–S/11, AB24 rev. 1, which provides instructions for replacement of the affected fuel hoses with an improved part. As the affected burner and related fuel hoses can easily be installed on other hot air balloons, this AD applies to all possibly affected type designs.
>
> For the reasons described above, this AD required identification and replacement of the affected fuel hoses.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8989.

Related Service Information Under 1 CFR Part 51

BALÓNY KUBÍČEK spol. s r.o. has issued Service Bulletin No. BB/50, BB–S/11, AB24 rev.1, dated May 12, 2016. The service information describes procedures for replacing all fuel lines on burners that utilize EGEFLEX hoses. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on type certificated products that incorporate the affected burners.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition could result in a fire, damaging the balloon and its envelope, ultimately leading to an emergency landing, with consequent injury to the occupants and persons on the ground. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8989; Directorate Identifier 2016–CE–025–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 6,400 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with the basic inspection requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $272,000, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 2 work-hours and require parts costing $200, for a cost of $370 per product. We have no way of determining the number of hot air balloons that may need the replacement, but we estimate that it will affect no more than 60 hot air balloons.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–17–04 All Hot Air Balloons: Amendment 39–18617; Docket No. FAA–2016–8989; Directorate Identifier 2016–CE–025–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all hot air balloons, certificated in any category, with BALÓNY KUBÍČEK spol. s r.o. Model Kubíček burners.

(d) Subject

Air Transport Association of America (ATA) Code 28: Fuel.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as propane leaks on burners equipped with fuel hoses made of EGEFLEX material. We are issuing this AD to prevent propane leaks in the fuel hoses, which could result in a fire, damaging the balloon and its envelope, ultimately leading to an emergency landing, with consequent injury to the occupants and persons on the ground.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within the next 14 days after August 29, 2016 (the effective date of this AD), inspect all hot air balloon fuel lines to determine if a Kubíček fuel hose made of "EGEFLEX" material is installed. Do the inspection as following BALÓNY KUBÍČEK spol. s r.o.. Service Bulletin No. BB/50, BB–S/11, AB24 rev.1, dated May 12, 2016.

(2) If any Kubíček hose made of "EGEFLEX" material is found during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the fuel hose following BALÓNY KUBÍČEK spol. s r.o. Service Bulletin No. BB/50, BB–S/11, AB24 rev.1, dated May 12, 2016.

(3) As of August 29, 2016 (the effective date of this AD), do not install a Kubíček fuel hose made of "EGEFLEX" material.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any balloon to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2016–0151, dated July 26, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8989.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) BALÓNY KUBÍČEK spol. s r.o. Service Bulletin No. BB/50, BB–S/11, AB24 rev.1, dated May 12, 2016.

(ii) Reserved.

(3) For BALÓNY KUBÍČEK spol. s r.o. service information identified in this AD, contact BALÓNY KUBÍČEK spol. s r. o., Jarní 2a, 614 00 Brno, Czech Republic, telephone: +420 545 422 620; fax: +420 545 422 621; email: *info@kubicekballons.cz.* Internet: *http://www.kubicekballoons.eu.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–8989.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri on August 16, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19937 Filed 8–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 160719631–6631–01]

RIN 0694–AH06

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding ten persons under fourteen entries to the Entity List. The ten persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These ten persons will be listed on the Entity List under the destinations of Iraq, the Philippines, Syria, and Turkey.

DATES: This rule is effective August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability, of most license exceptions for, exports, reexports, and transfers (in-country) to those listed.

The "license review policy" for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add ten persons under fourteen entries to the Entity List. These ten persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The fourteen entries added to the entity list consist of three entries in Iraq, one entry in the Philippines, four entries in Syria, and six entries in Turkey. There are fourteen entries for the ten persons because two of the persons are listed in multiple locations, resulting in four additional entries.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these ten persons under fourteen entries to the Entity List. Under that paragraph, persons and those acting on behalf of such persons may be added to the Entity List if there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States. Paragraphs (b)(1) through (5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Pursuant to § 744.11(b)(1) of the EAR, the ERC determined that nine persons, located in the destinations of Iraq, Syria and Turkey, be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. The ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that Sekirin (Sekirin Tekstil lthalat Ihracat Ic ve Dis Ticaret Limited Sirketi), Yildiz (Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama Ithalat Ihracat ve Ticaret Ltd. Sirketi), and their seven associates (Luqman Yasin Yunus Shgragi, Yunus Luqman Yasin Shgragi, Abd Al Hakim Luqman Jasim Muhammad, Muhammad 'ulwan Al-Shawi, Ala al-Shawi, Ali Guzel, and Jamal Jum'ah al-Shawi) have been involved in actions contrary to the national security or foreign policy interests of the United States. Sekirin, Yildiz, and their seven associates have been involved in activities that are contrary to the national security and foreign policy interests of the United States by supporting persons engaged in acts of terror as set forth in § 744.11(b)(1) of the EAR. Specifically, these entities have been providing logistical and material support to the Islamic State of Iraq and the Levant (ISIL).

In addition, pursuant to § 744.11(b), the ERC determined that one person, located in the Philippines, should be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. The ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that Warren Sumaylo, has been involved in actions contrary to the national security or foreign policy interests of the United States. Specifically, in July 2014, Warren Sumaylo was indicted for exporting weapon sights and rifle scopes to the Philippines in violation of the EAR and the International Traffic in Arms Regulations (ITAR).

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these ten persons raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR. Therefore, these ten persons are being added to the Entity List under fourteen entries.

For the ten persons under fourteen entries added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym "a.k.a." (also known as) is used in entries on the Entity List to help exporters, reexporters and transferors better identify listed persons on the Entity List.

This final rule adds the following ten persons under fourteen entries to the Entity List:

Iraq

(1) *Abd Al Hakim Luqman Jasim Muhammad,*
Al Faysaliyah, Mosul, Iraq;
(2) *Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama lthalat Ihracat ve Ticaret Ltd. Sirketi,* a.k.a., the following four aliases:
—Ag Yildiz Cargo;
—Ag Yildiz Gayrimenkul;
—Yildiz Company; *and*
—Yildiz Shipping Company.

Irbil, Iraq; and Mosul, Iraq (See alternate addresses under Syria and Turkey); *and*
(3) *Sekirin Tekstil Ithalat Ihracat le ve Dis Ticaret Limited Sirketi,* a.k.a., the following seven aliases:
—Sekirin Textiles Export Import Limited Company;
—Al Shakirin International Transport Company;
—Shakirin Company;
—Shakrin Company;
—Sekirin Ticaret;
—Al Shakirin Company; *and*
—Sekirin Company.

Al Faysaliyah, Mosul, Iraq (See alternate addresses under Syria and Turkey).

Philippines

(1) *Warren Sumaylo,*
053 E Luna Street, Bgry Sikatuna, Butuan City, Philippines.

Syria

(1) *Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama lthalat Ihracat ve Ticaret Ltd. Sirketi,* a.k.a. the following four aliases:
—Ag Yildiz Cargo;
—Ag Yildiz Gayrimenkul;
—Yildiz Company; *and*
—Yildiz Shipping Company.

Al Bab, Syria (See alternate addresses under Iraq and Turkey);
(2) *Jamal Jum'ah al-Shawi,*
Al Bab, Syria;
(3) *Muhammad 'ulwan Al-Shawi,*
Al Bab, Syria; *and*
(4) *Sekirin Tekstil Ithalat Ihracat le ve Dis Ticaret Limited Sirketi,* a.k.a., the following seven aliases:

—Sekirin Textiles Export Import Limited Company;
—Al Shakirin International Transport Company;
—Shakirin Company;
—Shakrin Company;
—Sekirin Ticaret;
—Al Shakirin Company; *and*
—Sekirin Company.

Al Bab, Syria (See alternate addresses under Iraq and Turkey).

Turkey

(1) *Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama Ithalat Ihracat ve Ticaret Ltd. Sirketi,* a.k.a., the following four aliases:

—Ag Yildiz Cargo;
—Ag Yildiz Gayrimenkul;
—Yildiz Company; *and*
—Yildiz Shipping Company.

Guneykent Mah. Universite Blv. Tuze Sitesi Alti No: 393/B, Sahinbey, Gaziantep, Turkey (See alternate addresses under Iraq and Syria);

(2) *Ala al-Shawi,* a.k.a., the following one alias:

—Abu Cemal.

60147 Caddesi No. 23, Sanayi Mahallesi, Sehitkamil, Gaziantep, Turkey;

(3) *Ali Guzel,*
60147 Caddesi No. 23, Sanayi Mahallesi, Sehitkamil, Gaziantep, Turkey;

(4) *Luqman Yasin Yunus Shgragi,* a.k.a., the following two aliases:

—Lkemanasel Yosef; *and*
—Luqman Sehreci.

Savcili Mahalesi Turkmenler Caddesi No:2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, SehitKamil, Gaziantep, Turkey;

(5) *Sekirin Tekstil Ithalat Ihracat le ve Dis Ticaret Limited Sirketi,* a.k.a., the following seven aliases:

—Sekirin Textiles Export Import Limited Company;
—Al Shakirin International Transport Company;
—Shakirin Company;
—Shakrin Company;
—Sekirin Ticaret;
—Al Shakirin Company; *and*
—Sekirin Company.

Savcili Mahalesi Turkmenler Caddesi No:2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, Sehit Kamil, Gaziantep, Turkey (See alternate addresses under Iraq and Syria); *and*

(6) *Yunus Luqman Yasin Shgragi,* a.k.a., the following one alias:

—Yunus Sehreci.

Savcili Mahalesi Turkmenler Caddesi No: 2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, SehitKamil, Gaziantep, Turkey.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on August 23, 2016, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable to this rule because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016) ; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding in alphabetical order, an entry for Iraq and three Iraqi entities;

■ b. By adding in alphabetical order, an entry for Philippines and one Filipino entity;

■ c. By adding under Syria, in alphabetical order, four Syrian entities; and

■ d. By adding under Turkey, in alphabetical order, six Turkish entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
* * * * * * *				
IRAQ	Abd Al Hakim Luqman Jasim Muhammad, Al Faysaliyah, Mosul, Iraq.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
	Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama Ithalat Ihracat ve Ticaret Ltd. Sirketi, a.k.a. the following four aliases: —Ag Yildiz Cargo; —Ag Yildiz Gayrimenkul; —Yildiz Company; *and* —Yildiz Shipping Company. Irbil, Iraq; and Mosul, Iraq (See alternate addresses under Syria and Turkey).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
	Sekirin Tekstil Ithalat Ihracat Ie ve Dis Ticaret Limited Sirketi, a.k.a., the following seven aliases: Sekirin Textiles Export Import Limited Company; —Al Shakirin International Transport Company; —Shakirin Company; —Shakrin Company; —Sekirin Ticaret; —Al Shakirin Company; *and* —Sekirin Company.	For all items subject to the EAR. (See § 744.11 of the EAR). Al Faysaliyah, Mosul, Iraq (See alternate addresses under Syria and Turkey).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
* * * * * * *				
PHILIPPINES ...	Warren Sumaylo, 053 E Luna Street, Bgry Sikatuna, Butuan City, Philippines.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
* * * * * * *				
SYRIA	Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama Ithalat Ihracat ve Ticaret Ltd. Sirketi, a.k.a., the following four aliases: —Ag Yildiz Cargo; —Ag Yildiz Gayrimenkul; —Yildiz Company; *and* —Yildiz Shipping Company. Al Bab, Syria (See alternate addresses under Iraq and Turkey).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
	Jamal Jum'ah al-Shawi, Al Bab, Syria.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
	Muhammad 'ulwan Al-Shawi, Al Bab, Syria	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
	Sekirin Tekstil Ithalat Ihracat Ie ve Dis Ticaret Limited Sirketi, a.k.a., the following seven aliases: —Sekirin Textiles Export Import Limited Company; —Al Shakirin International Transport Company; —Shakirin Company; —Shakrin Company; —Sekirin Ticaret; —Al Shakirin Company; *and* —Sekirin Company.	For all items subject to the EAR. (See § 744.11 of the EAR). Al Bab, Syria (See alternate addresses under Iraq and Turkey).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
TURKEY	Ag Yildiz Insaat Gayrimenkul Tasimacilik Pazarlama Ithalat Ihracat ve Ticaret Ltd. Sirketi, a.k.a., the following four aliases: —Ag Yildiz Cargo; —Ag Yildiz Gayrimenkul; —Yildiz Company; *and* —Yildiz Shipping Company. Guneykent Mah. Universite Blv. Tuze Sitesi Alti No: 393/B, Sahinbey, Gaziantep, Turkey (See alternate addresses under Iraq and Syria).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
	Ala al-Shawi, a.k.a., the following one alias: —Abu Cemal. 60147 Caddesi No. 23, Sanayi Mahallesi, Sehitkamil, Gaziantep, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
	Ali Guzel, 60147 Caddesi No. 23, Sanayi Mahallesi, Sehitkamil, Gaziantep, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
	Luqman Yasin Yunus Shgragi, a.k.a., the following two aliases: —Lkemanasel Yosef; *and* —Luqman Sehreci. Savcili Mahalesi Turkmenler Caddesi No:2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, SehitKamil, Gaziantep, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
	Sekirin Tekstil Ithalat Ihracat le ve Dis Ticaret Limited Sirketi, a.k.a., the following seven aliases: —Sekirin Textiles Export Import Limited Company; —Al Shakirin International Transport Company; —Shakirin Company; —Shakrin Company; —Sekirin Ticaret; —Al Shakirin Company; *and* —Sekirin Company. Savcili Mahalesi Turkmenler Caddesi No:2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, Sehit Kamil, Gaziantep, Turkey (See alternate addresses under Iraq and Syria).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*
	Yunus Luqman Yasin Shgragi, a.k.a., the following one alias: —Yunus Sehreci. Savcili Mahalesi Turkmenler Caddesi No: 2, Sahinbey, Gaziantep, Turkey; *and* Sanayi Mahalesi 60214 Nolu Caddesi No 11, SehitKamil, Gaziantep, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER], 08/23/16.
*	* *	*	* *	*

Dated: August 17, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–20142 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

[Docket No. USCBP–2016–0054; CBP Dec. 16–12]

RIN 1515–AE15

Prohibition on Importation of Jadeite or Rubies Mined or Extracted From Burma, and Articles of Jewelry Containing Jadeite or Rubies Mined or Extracted From Burma

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (“CBP”) regulations to update the provisions relating to the prohibition on importation of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma, following the expiration of the Burmese Freedom and Democracy Act of 2003, as amended by the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008. The CBP regulations are amended to reflect the import prohibitions set forth in Executive Order 13651 of August 6, 2013.

DATES: Effective August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel Collier, Partner Government Agency Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6225, *Daniel.Collier@cbp.dhs.gov;* or William Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6554, *William.R.Scopa@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2003, the President signed into law the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108–61) (the “BFDA”) to sanction the military junta then ruling Burma. Among other provisions, the BFDA required the imposition, subject to annual renewal, of a ban on the importation into the United States of any article that is a product of Burma. To implement the BFDA, the President issued Executive Order (“E.O.”) 13310 (68 FR 44853, July 30, 2003). E.O. 13310 prohibited, among other things, the importation into the United States of any article that is a product of Burma.

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Pub. L. 110–286) (the “JADE Act”), which, among other things, amended the BFDA to require a prohibition on the importation into the United States of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies, referred to in the statute as Burmese covered articles. It also imposed certain conditions on the importation into the United States of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing such jadeite or rubies, referred to in the statute as non-Burmese covered articles. Section 12.151 of the CBP regulations (Title 19, Code of Federal Regulations ("CFR"), section 12.151) currently reflects this prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies as well as the imposition of certain conditions on the importation of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing such jadeite or rubies.

The BFDA, as amended by the JADE Act, required annual renewal, which did not occur in 2013. As a result, the prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing jadeite or rubies mined or extracted from Burma and the corresponding conditions on the importation of jadeite or rubies mined or extracted from a country other than Burma and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma expired on July 28, 2013. Subsequently, on August 6, 2013, the President signed E.O. 13651, titled "Prohibiting Certain Imports of Burmese Jadeite and Rubies" which prohibits the importation of any jadeite or rubies mined or extracted from Burma as well as any articles of jewelry containing jadeite or rubies mined or extracted from Burma. *See* 78 FR 48793. E.O. 13651 also revoked the sections of E.O. 13310 imposing a prohibition on the importation into the United States of any article that is a product of Burma. As a result, there is no longer a general ban on importing into the United States any article that is a product of Burma; however, the specific ban on jadeite and rubies mined or extracted from Burma as well as articles of jewelry containing jadeite or rubies mined or extracted from Burma was reinstituted by E.O. 13651.

Explanation of Amendments

Part 12

Section 12.151 is amended to reflect the expiration of the BFDA, as amended by the JADE Act, and the issuance of E.O. 13651. The specific authority citation for section 12.151 is amended accordingly by removing references to the BFDA, as amended by the JADE Act, Presidential Proclamation 8294, signed on September 26, 2008, and Additional U.S. Note 4 to Chapter 71 of the U.S. Harmonized Tariff Schedule (HTSUS), and adding a reference to the current authority, E.O. 13651, of August 6, 2013 (78 FR 48793). While E.O. 13651 re-imposes the prohibition on the importation of jadeite and rubies mined or extracted from Burma and articles of jewelry containing such jadeite and rubies, it does not impose any conditions on the importation of jadeite and rubies mined or extracted from a country other than Burma or articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma as the BFDA, as amended by the JADE Act, did. Accordingly, section 12.151 is amended by removing paragraphs (c) through (f) which detail the certification and recordkeeping requirements for non-Burmese covered articles (referred to in section12.151 as "regulated articles").

In addition, the heading to section 12.151 is revised to reflect the expiration of conditions on non-Burmese covered articles by removing the words "and conditions". The heading is further revised to more specifically refer to jadeite or rubies mined or extracted from Burma and articles of jewelry containing jadeite or rubies mined or extracted from Burma.

The introductory text in paragraph (a) of section 12.151 is amended to remove the reference to the Tom Lantos Block Burmese JADE Act of 2008 (Pub. L. 110–286) and to cite instead to the current authority, E.O. 13651 of August 6, 2013 (78 FR 48793). Paragraph (a) is also amended to reflect the expiration of conditions on non-Burmese covered articles by removing the words "or conditioned". Given that E.O. 13651 does not impose any conditions on jade or rubies mined or extracted from a country other than Burma or articles of jewelry containing jade or rubies mined or extracted from a country other than Burma, it is no longer necessary to distinguish between "prohibited articles" and "regulated articles". As a result of the amendments described in this document, the list of prohibited articles, which is currently set forth in paragraph (b), is set forth in revised paragraph (a). Paragraph (b) is revised to set forth the exception currently found in paragraph (g)(1) as E.O. 13651 retains the exception for prohibition on the import of Burmese jadeite or rubies or articles of jewelry containing Burmese jadeite or rubies that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, provided that they are reimported to the United States by the same person who exported them, without having been advanced in value or improved in condition by any process or other means while outside the United States (E.O. 13651 (78 FR 48793)). Given that E.O. 13651 does not impose any conditions on jade or rubies mined or extracted from a country other than Burma or articles of jewelry containing jade or rubies mined or extracted from a country other than Burma, subparagraph (g)(2) is removed.

CBP advises parties who plan to temporarily export any jadeite or rubies or any article of jewelry containing jadeite or rubies, whether of Burmese origin or not, to register those articles prior to export through CBP Form 4455 (Certificate of Registration), CBP Form 4457 (Certificate of Registration for Personal Effects Taken Abroad), or a carnet issued by the U.S. Council for International Business. If one of these three documents is not presented to CBP at the time of re-importation into the United States, the importer must present documentary evidence that supports the claim that the subject articles were exported and reimported by the same person without having been advanced in value or improved in condition by any process or other means while outside the United States. Without such documentation, the articles are subject to seizure by CBP.

Part 163

The list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) List) is amended to remove the records previously required to support the certification of non-Burmese covered articles under section 3A(c)(1) of the BFDA.

Inapplicability of Prior Public Notice and Delayed Effective Date

This document amends the regulations to reflect Executive Order 13651 of August 6, 2013. Because this regulation merely removes expired statutory requirements and inserts the new legal authority for the continuing import prohibition, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are impracticable and contrary to the public interest and that there is good cause for this rule to become effective immediately upon publication. For these reasons, pursuant to the provision of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. As a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information in this final rule were previously approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0133. However this information collection and control number were discontinued in 2014 when the requirement for submission of the certification from the exporter was eliminated.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Jadeite, Jewelry, Imports, Licensing, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Rubies sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR parts 12 and 163) are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 continues to read, and the specific authority citation for § 12.151 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.151 also issued under E.O. 13651 of August 6, 2013, 78 FR 48793.

* * * * *

■ 2. In § 12.151:
■ a. The heading is revised;
■ b. Paragraph (a) introductory text is revised;
■ c. Paragraph (b) is revised; and
■ d. Paragraphs (c) through (g) are removed.

The revisions read as follows:

§ 12.151 Prohibition on importations of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma.

(a) *General.* Except as provided in paragraph (b) of this section, the importation into the United States of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma is prohibited pursuant to Executive Order (EO) 13651 of August 6, 2013. For purposes of this section, the following definitions apply:

* * * * *

(b) *Inapplicability.* This section does not apply to Burmese jadeite, rubies, and articles of jewelry containing Burmese jadeite or rubies that are reimported into the United States after having been previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person who exported them, without having been advanced in value or improved in condition by any process or other means while outside the United States.

PART 163—RECORDKEEPING

■ 3. The general authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

Appendix to Part 163 [Amended]

■ 4. In the Appendix to part 163, within section IV, the listing for § 12.151 is removed.

R. Gil Kerlikowske,
Commissioner, U.S. Customs and Border Protection.

Approved: August 17, 2016.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–20057 Filed 8–22–16; 8:45 am]
BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9777]

RIN 1545–BG41; RIN 1545–BH38

Arbitrage Guidance for Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9777) that were published in the **Federal Register** on Monday, July 18, 2016 (81 FR 46582). The final regulations relate to the arbitrage restrictions under section 148 of the Internal Revenue Code applicable to tax-exempt bonds and other tax-advantaged bonds issued by State and local governments.

DATES: This correction is effective August 23, 2016 and applicable July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Spence Hanemann at (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9777) that are the subject of this correction are under section 148 of the Internal Revenue Code.

Need for Correction

As published, the final regulation (TD 9777) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is amended by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.148–11 [Amended]

■ **Par. 2.** Section 1.148–11 is amended by removing "October 17, 2016" at end of paragraphs (l)(2) and (l)(3) and adding "July 18, 2016" in its place.

Martin V. Franks

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–20087 Filed 8–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9777]

RIN 1545–BG41; RIN 1545–BH38

Arbitrage Guidance for Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9777) that were published in the **Federal Register** on Monday, July 18, 2016 (81 FR 46582). The final regulations relate to the arbitrage restrictions under section 148 of the Internal Revenue Code applicable to tax-exempt bonds and other tax-advantaged bonds issued by State and local governments.

DATES: This correction is effective *August 23, 2016* and applicable July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Spence Hanemann at (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9777) that are the subject of this correction are under section 148 of the Internal Revenue Code.

Need for Correction

As published, the final regulation (TD 9777) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulation (TD 9777), that is the subject of FR Doc. 2016–16558, are corrected as follows:

■ 1. On page 46591, in the preamble, the second column, under the paragraph heading "*Applicability Dates*", a second paragraph is added after the last sentence to read as follows: "In addition, the amendments to § 1.148–3(j) in the Final Regulations apply to bonds subject to § 1.148–3(i). For this purpose, a bond is considered to be subject to § 1.148–3(i) if the issue of which the bond is a part is subject to the version of § 1.148–3(i) published in TD 8476 (58 FR 33510) or any subsequent version.".

■ 2. On page 46591, in the preamble, the second column, under the paragraph heading "*Effect on Other Documents*", the first line, the language "As of July 18, 2016, Revenue" is corrected to read "As of October 17, 2016, Revenue".

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–20086 Filed 8–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0689]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, St. Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Upper Mississippi River from mile 180 to mile 180.5. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during a fireworks display on and over the navigable waterway. During the period of enforcement, entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River (COTP) or other designated representative.

DATES: This rule is effective from 8:30 p.m. to 10:30 p.m. on September 3, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0689 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LNM	Local Notice to Mariners
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
UMR	Upper Mississippi River

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because the Coast Guard was not notified of the fireworks display until July 8, 2016. After full review of the details for the planned and locally advertised displays, the Coast Guard determined action is needed to protect people and property from the safety hazards associated with the fireworks display on the UMR near St. Louis, MO. It is impracticable to publish an NPRM because we must establish this safety zone by September 3, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule is contrary to the public interest as it would delay the effectiveness of the temporary safety zone needed to respond to potential related safety hazards until after the planned fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the fireworks display will be a safety concern before, during, and after the display. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 p.m. to 10:30 p.m. on September 3, 2016. The safety zone will cover all navigable waters between miles 180 and 180.5 on the UMR in St. Louis, MO. Exact times of the closures and any changes to the planned schedule will be communicated to mariners using BNM and LNM. The safety zone is intended to ensure the safety of vessels and these navigable waters before, during and after the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These rules have not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, they have not been reviewed by the Office of Management and Budget.

This temporary final rule establishes a safety zone impacting a one-half mile area on the UMR for a limited time period of two hours. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative. Based on the location, limited safety zone area, and short duration of the enforcement period, this rule does not pose a significant regulatory impact. Additionally, notice of the safety zone or any changes in the planned schedule will be made via BNM and LNM. Deviation from this rule may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these rules. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42

U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry from mile 180 to 180.5 on the UMR. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0689 to read as follows:

§ 165.T08–0689 Safety Zone; Upper Mississippi River between miles 180 and 180.5; St. Louis, MO.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River between miles 180 to 180.5, St. Louis, MO.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Sector Upper Mississippi River at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on September 3, 2016.

(e) *Informational Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: August 17, 2016.

M.L. Malloy

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2016–20084 Filed 8–22–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2016–0402; FRL–9951–18–OAR]

Extension of Deadline for Action on the July 2016 Section 126 Petition From Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition submitted by the state of Delaware pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that the Brunner Island Steam Electric Station located in York County, Pennsylvania, emit air pollution that significantly contributes to nonattainment and interferes with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in state of Delaware. Under section 307(d)(10) of CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the section 307(d)'s notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is therefore extending the deadline for acting on the petition to no later than March 5, 2017.

DATES: This final rule is effective on August 23, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0402. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Gobeail McKinley, Office of Air Quality Planning and Standards (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–5246, email: *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Legal Requirements for Interstate Air Pollution

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of Delaware filed pursuant to CAA section 126(b). The EPA received the petition on July 7, 2016. The petition requests that the EPA make a finding under section 126(b) of the CAA that the Brunner Island Steam Electric Station located in York County, Pennsylvania, is operating in a manner that emits air pollutants in violation of the provisions of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 and 2015 ozone NAAQS.

Section 126(b) of the CAA authorizes states to petition the EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i)[1] by contributing

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[1] The text of CAA section 126 codified in the United States Code cross references CAA section

Continued

significantly to nonattainment or maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. The petition asserts that emissions from the Brunner Island's three major boiler units significantly contribute to Delaware's nonattainment of the 2008 8-hour ozone NAAQS, set at 0.075 parts per million (ppm), and the revised 2015 8-hour ozone NAAQS, set at 0.070 ppm.[2]

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

CAA section 126(b) further provides that the EPA must hold a public hearing on the petition. The EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3)–(6).

In addition, CAA section 307(d)(10) provides for a time extension, under certain circumstances, for a rulemaking subject to CAA section 307(d). Specifically, CAA section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

CAA section 307(d)(10) may be applied to section 126 rulemakings because the 60-day time limit under CAA section 126(b) necessarily limits the period for promulgation of a final rule after proposal to less than 6 months.

II. Final Rule

A. Rule

In accordance with CAA section 307(d)(10), the EPA is determining that the 60-day period afforded by CAA section 126(b) for responding to the petition from the state of Delaware is not adequate to allow the public and the agency the opportunity to carry out the purposes of CAA section 307(d). Specifically, the 60-day period is insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether the Brunner Island Steam Electric Station identified in the CAA section 126 petition contributes significantly to nonattainment or interferes with maintenance of the 2008 ozone NAAQS or the 2015 ozone NAAQS in Delaware. Moreover, the 60-day period is insufficient for the EPA to review and develop response to any public comments on a proposed finding, or testimony supplied at a public hearing, and to develop and promulgate a final finding in response to the petition. The EPA is in the process of determining an appropriate schedule for action on the CAA section 126 petition. This schedule must afford the EPA adequate time to prepare a proposal that clearly elucidates the issues to facilitate public comment, and must provide adequate time for the public to comment and for the EPA to review and develop responses to those comments prior to issuing the final rule. As a result of this extension, the deadline for the EPA to act on the petition is March 5, 2017.

B. Notice and Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination, the deadline for action on the CAA section 126 petition should be extended. Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the substantive review of the CAA section 126 petition.

C. Effective Date Under the APA

This action is effective on August 23, 2016. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. As discussed earlier, the EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for the EPA to complete the required notice and comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This good cause final action simply extends the date for the EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It does not contain any recordkeeping or reporting requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).*

[2] On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare. *See* 80 FR 65291 (October 26, 2015).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This good cause final action simply extends the date for the EPA to take action on a petition. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This good cause final action simply extends the date for the EPA to take action on a petition and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

IV. Statutory Authority

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the appropriate circuit by October 24, 2016. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone.

Dated: August 15, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–20140 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0075; FRL–9950–86–Region 5]

Air Plan Approval; Wisconsin; Kenosha County 2008 8-Hour Ozone Nonattainment Area Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) for the Kenosha County, Wisconsin 8-hour ozone nonattainment area. Wisconsin submitted an Early Progress Plan for Kenosha County on January 16, 2015. This submittal was developed to establish MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Kenosha 2008 8-hour ozone nonattainment area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows progress toward attainment from the 2011 base year through a 2015 target year.

DATES: This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 22, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0075 at *http://www.regulations.gov* or via email to *persoon.carolyn@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background for this action?
II. What are the criteria for early progress plans?
III. What is EPA's analysis of the request?
IV. What are the MVEBs for the Kenosha County 2008 8-hour ozone nonattainment area?
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews.

I. What is the background for this action?

EPA's final rule designating nonattainment areas and associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the **Federal Register** on May 21, 2012 (77 FR 30088). A portion of Kenosha County was designated as marginal nonattainment. The Kenosha County 2008 8-hour ozone nonattainment area had been previously designated nonattainment as part of the larger Milwaukee area for the 1997 8-hour ozone standard and had MVEBs for NO_X and VOC established in the Wisconsin 1997 8-hour maintenance plan SIP. Consequently, the transportation partners in the Kenosha area have to use the 1997 8-hour ozone nonattainment MVEBs for the Milwaukee area to demonstrate transportation conformity for the 2008 8-hour ozone standard until new MVEBs are approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Wisconsin submitted this plan to establish new MVEBs for Kenosha County developed with EPA's MOVES2014 model.

II. What are the criteria for early progress plans?

EPA allows for the establishment of MVEBs for the 2008 8-hour ozone standard prior to a state submitting its first required 2008 8-hour ozone SIP that would include new MVEBs. Although voluntary, these "early" MVEBs must be established through a plan that meets all the requirements of a SIP submittal. This plan is known as the "Early Progress Plan." Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (*see,* 69 FR 40019) reads as follows:

> The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.,* rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas 'are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas.

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, shows progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (*i.e.,* 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the Kenosha 8-hour ozone area.

III. What is EPA's analysis of the request?

On January 16, 2015, the State submitted to EPA an Early Progress Plan for the sole purpose of establishing MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. The submittal utilizes a base year of 2011, and a projected year 2015 to establish NO_X and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Kenosha interagency consultation group, which consists of the transportation and air quality partners in the Kenosha 2008 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2011 base year and 2015 forecast year. The NO_X and VOC emissions in tons per day (tpd) within the Kenosha nonattainment area are expected to decrease significantly, 6.9 percent and 8.9 percent, respectively, between 2011 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

TABLE 1—KENOSHA COUNTY 2008 OZONE NONATTAINMENT AREA NO_X EMISSIONS

[Kenosha County NO_X Emissions]

Source	2011 NO_X (tpd)	2015 NO_X (tpd)
Point	8.80	6.15
Area	1.09	1.33
On-road Mobile	5.17	4.40
Non-Road Mobile	2.14	1.69
Total	17.17	15.98
Total Percent Reduction	6.9%	

TABLE 2—KENOSHA COUNTY 2008 OZONE NONATTAINMENT AREA VOC EMISSIONS

[Kenosha County VOC Emissions]

VOC Source	2011 VOC (tpd)	2015 VOC (tpd)
Point	0.70	2.63
Area	4.78	4.72
On-road Mobile	2.38	1.99
Non-Road Mobile	1.46	1.08
Total	9.32	8.49
Total Percent Reduction	8.9%	

EPA found these MVEBs adequate for transportation conformity purposes in an earlier action (80 FR 17428, April 1, 2015). As of April 16, 2015, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Kenosha County must meet the budget test using these 2008 8-hour ozone MVEBs, instead of the 1997 8-hour ozone MVEBs. Please note that this adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

IV. What are the MVEBs for the Kenosha 2008 8-hour ozone nonattainment area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for NO_X and VOC for the Kenosha County 2008 8-hour ozone nonattainment area. EPA has determined that the MVEBs contained in the Early Progress Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO_X for the Kenosha County, Wisconsin nonattainment area are as follows:

Area	2015 NO_X (tpd)	2015 VOCs (tpd)
Kenosha County	4.397	1.944

V. What action is EPA taking?

EPA is approving Kenosha's Early Progress Plan, including the 2015 MVEBs for NO_X and VOC. The Early Progress Plan demonstrates progress towards attainment of the 2008 8-hour ozone NAAQS for the Kenosha nonattainment area. The NO_X and VOC emissions reductions from 2011 to 2015 for Kenosha County nonattainment areas were 6.9 percent and 8.9 percent, respectively. These emission reductions are based on control measures that are permanent and enforceable and will continue to improve air quality in the region, thus demonstrating that the MVEBs are showing progress toward attainment.

EPA issues this direct final rulemaking in response to Wisconsin's January 16, 2015 submittal of an Early Progress Plan. This revision is a voluntary SIP revision for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Kenosha County 2008 8-hour ozone nonattainment area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective October 24, 2016 without further notice unless we receive relevant adverse written comments by September 22, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 24, 2016.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Oxides of nitrogen.

Dated: August 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2585 is amended by adding paragraph (ee) to read as follows:

§ 52.2585 Control strategy; ozone.

* * * * *

(ee) Approval—On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Kenosha County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the year 2015. The MVEBs for Kenosha County nonattainment area are now: 1.994 tons per day of VOC emissions and 4.397 tons per day of NO_X emissions for the year 2015.

[FR Doc. 2016–20002 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0418; FRL–9950–94–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Minor New Source Review—Nonroad Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia state implementation plan (SIP). The revisions amend the definition of "nonroad engine" under Virginia's minor New Source Review (NSR) requirements to align with Federal requirements. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 24, 2016 without further notice, unless EPA receives adverse written comment by September 22, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0418 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2014, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, submitted a formal revision to its SIP. The SIP revision consists of amendments to the definition of "nonroad engine" under VADEQ's minor NSR regulations. Virginia has a SIP approved minor NSR program located in the Virginia Administrative Code (VAC) at 9VAC 5–80 which regulates certain modifications and construction of stationary sources within areas covered by its SIP as necessary to assure the national ambient air quality standards (NAAQS) are achieved.

II. Summary of SIP Revision and EPA Analysis

VADEQ's June 17, 2014 SIP submittal includes revisions to the definition of "nonroad engine" under the VAC, specifically 9VAC5–80–1110. The definition of "nonroad engine" was expanded to include portable and temporary engines. The revision to 9VAC5–80–1110 makes VADEQ's definition more consistent with the Federal definition at 40 CFR 89.2. According to VADEQ, Federal design standards for internal combustion engines and Federal fuel standards for engines are already more restrictive than permit requirements for portable and temporary engines in Virginia's minor NSR program. Virginia's amended definition adopts the Federal definition of "nonroad engine," grouping portable engines and temporary engines together with other non-mobile engines. The revised definition will streamline Virginia's minor NSR program by no longer requiring VADEQ to issue minor NSR permits without meaningful additional emissions control requirements on those engines. Virginia asserted the amended definition does not increase emissions or otherwise affect air quality.

EPA finds these revisions are appropriate and meet the Federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C) for a minor NSR program. Additionally, the revision to 9VAC5–80–1110(and in particular the deletions in the revised regulation) are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

III. Final Action

EPA is approving VADEQ's June 17, 2014 SIP submittal and incorporating the revised regulation into Virginia's SIP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 24, 2016 without further notice unless EPA receives adverse comment by September 22, 2016. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its NSR program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the VADEQ rules regarding definitions and permitting requirements discussed in section II of this preamble. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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[1] 62 FR 27968 (May 22, 1997).

- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action pertaining to Virginia's minor NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 8, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding an entry for Article 6—Permits for New and Modified Stationary Sources after Article 5 in 9 VAC 5–80 and adding an entry for 5–80–1110 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA Approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 80 Permits for Stationary Sources [Part VIII]				
*	*	*	*	*
Article 6—Permits for New and Modified Stationary Sources				
5–80–1110	Definitions	3/27/14	8/23/16, [Insert **Federal Register** Citation].	
*	*	*	*	*

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[FR Doc. 2016–19888 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0523; FRL–9950–84–Region 5]

Air Plan Approval; Indiana; Shipbuilding Antifoulant Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal by the Indiana Department of Environmental Management (IDEM) dated July 17, 2015. The submittal contains a new volatile organic compound (VOC) limit for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. The submittal also includes a demonstration that this revision satisfies the anti-backsliding provisions of the Clean Air Act (CAA). The submittal additionally removes obsolete dates and clarifies a citation.

DATES: This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 22, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0523 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background of this SIP revision?
II. What is EPA's analysis of the State's submittal?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background of this SIP revision?

On July 17, 2015, IDEM submitted to EPA a request to incorporate into Indiana's SIP a revised version of 326 Indiana Administrative Code (IAC) 8–12–4, "Volatile organic compound emissions limiting requirements," with an effective date of June 21, 2015.

Indiana's rulemaking adds, at 326 IAC 8–12–4(a)(1)(D), a VOC limit of 3.33 lbs VOC per gallon for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. In 326 IAC 8–12–3(22)(C), an "antifoulant specialty coating" is defined as any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act. The same definition is provided in EPA's Control Techniques Guidelines (CTG) for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR 44050, August 27, 1996). Clark and Floyd counties are part of the Louisville, KY-IN maintenance area for the 1997 ozone National Ambient Air Quality Standard (NAAQS), and Lake and Porter counties are part of the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone NAAQS and the Chicago-Gary-Lake County, IL-IN maintenance area for the 1997 ozone NAAQS.

Before IDEM added the revised VOC limit of 3.33 lbs VOC per gallon in 326 IAC 8–12–4(a)(1)(D), antifoulant coatings were limited by the specialty coating limit of 2.83 lbs VOC per gallon at 326 IAC 8–12–4(a)(1)(E), which IDEM has moved to 326 IAC 8–12–4(a)(1)(F) in this revision. The revised limit of 3.33 lbs VOC per gallon is consistent with the limit in Table 1–1 of EPA's Alternative Control Techniques (ACT) Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities (EPA–453/R–94–032, April 1994). In addition, it is consistent with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR part 63, subpart II. EPA's CTG identifies the limit from the ACT as Reasonably Available Control Technology (RACT), and states that the NESHAP can be used as a model rule for shipbuilding and ship repair facilities.

In Indiana's rulemaking, 326 IAC 8–12–4 is also revised to remove obsolete dates and clarify a reference to EPA's NESHAP for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR 63, subpart II.

This SIP revision relies on offsets generated by the Architectural and Industrial Maintenance (AIM) coatings rule at 326 IAC 8–14 to compensate for the increase in allowable VOC emissions.

II. What is EPA's analysis of the State's submittal?

Revisions to SIP-approved control measures must meet the requirements of, among other statutory provisions, section 110(l) of the CAA in order to be approved by EPA. Section 110(l), known as EPA's anti-backsliding provision, states:

"The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), states may substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions are not increased. "Equivalent" emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. As described in EPA's memorandum "Improving Air Quality with Economic Incentive Programs" published in January 2001 (EPA–452/R–01–001), the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

Indiana's revisions to 326 IAC 8–12–4 increase the allowable VOC content of antifoulant coatings used in shipbuilding or ship repair facilities from 2.83 lbs VOC per gallon to 3.33 lbs VOC per gallon. VOCs contribute to the formation of ground-level ozone. Thus, the potential increase in VOC needs to be offset with equivalent (or greater) emissions reductions from another VOC control measure in order to demonstrate non-interference with the 1997 ozone NAAQS or 2008 ozone NAAQS. Indiana's SIP submittal includes a 110(l) demonstration that relies on equivalent emission reductions to compensate for allowable emission increases resulting from the new VOC limit for antifoulant coatings.

326 IAC 8–12–4(a)(1)(D) currently applies to only one source, Jeffboat LLC, which operates a stationary shipbuilding and repair facility at 1030 E. Market St., Jeffersonville, Indiana, and is permitted under Title V Operating Permit T019–29304–0006. Jeffboat is located within Clark County and the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS. IDEM's 110(l) demonstration consists of a calculation of the maximum possible increase in VOC emissions from this source under the revised emission limit, followed by an identification of available offsets from the AIM rule at 326 IAC 8–14.

Indiana's submittal includes calculations illustrating the maximum possible increase in VOC emissions resulting from revisions to 326 IAC 8–12–4. Based on the maximum number of barges requiring antifoulant coatings, Jeffboat may use up to 2,580 gallons per year of coatings. At the original limit of 2.83 lbs VOC per gallon coating, the source may emit 3.65 tons VOC per year. In order to correctly determine the difference in resulting emissions, the original and revised limits must be compared on a solids basis; 2.83 lbs VOC per gallon coating equates to 4.6 lbs VOC per gallon solids, and 3.33 lbs VOC per gallon coating equates to 6.08 lbs VOC per gallon solids. From these figures, the revised limit is 32% higher than the original limit. A 32% increase from 3.65 tons VOC per year amounts to an increase in emissions of 1.17 tons VOC per year, or 0.004167 tons VOC per summer day. IDEM's section 110(l) demonstration states that offsets of this amount from Indiana's AIM coatings rule are needed to compensate for the increase in allowable emissions.

IDEM's calculations are more conservative than the approach recommended by EPA. Because Jeffboat operates six days per week, or 312 days per year, 1.17 tons VOC per year amounts to 0.00375 tons VOC per summer day. However, in this rulemaking, IDEM has requested to offset the revised limit in 326 IAC 8–12–4 with credits from Indiana's AIM rule in the amount of 0.004167 tons VOC per summer day.

Indiana's AIM rule goes above and beyond the Federal AIM rule by adopting a rule that is similar to the Ozone Transport Commission (OTC) model rule "Architectural & Industrial Maintenance (AIM) Coatings" updated October 13, 2014. According to a 2006 Lake Michigan Air Directors Consortium (LADCO) white paper, the OTC model rule provides an up to 60.5% reduction in VOC emissions compared to uncontrolled 2002 base case emissions, while the Federal AIM rule alone only provides a 20% reduction compared to base case.

The Indiana AIM rule was approved into the SIP on August 30, 2012 (77 FR 52606). Indiana was not required to adopt an AIM coatings rule, but did so as a multi-state effort to help reduce ozone levels at the regional level. Indiana did not adopt the AIM rule to comply with any Indiana SIP planning requirements and has not taken credit for it in air quality plans, nor has it been included in maintenance year horizons or rate of further progress (RFP) inventories. Therefore, these SIP approved AIM limits can be used as offsets for other purposes, such as this SIP revision.

Table 1 shows additional reductions available due to the OTC model rule and Indiana AIM rule. In the table, emission estimates are based on 2011 National Emission Inventory (NEI) data, which is the most recent NEI data currently available. Total reductions, as well as summer day calculations based on average daily emissions using a multiplier of 1.3, are based on the LADCO white paper. Indiana's 110(l) demonstration shows available offsets from the AIM rule of 0.292 tons VOC per summer day.

TABLE 1—CLARK AND FLOYD COUNTIES OFFSET ANALYSIS

County	Coating category	Tons/year	Ton/summday	Total reductions (AIM and OTC)	Federal AIM reduction	Additional reduction	Offset
Clark	Architectural	128.97	0.4594	0.388	0.2	0.24	0.108
Clark	Traffic Markings	0.14	0.0005	0.564	0.2	0.46	0.0002
Clark	Industrial Maintenance.	33.24	0.1184	0.605	0.2	0.51	0.060
Clark	Special Purpose	3.53	0.0126	0.605	0.2	0.51	0.006
Floyd	Architectural	87.26	0.3108	0.388	0.2	0.24	0.073
Floyd	Traffic Markings	0.08	0.0003	0.564	0.2	0.46	0.000
Floyd	Industrial Maintenance.	22.49	0.0801	0.605	0.2	0.51	0.041
Floyd	Special Purpose	2.39	0.0085	0.605	0.2	0.51	0.004
Total							0.292

IDEM's section 110(l) demonstration identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, and Indiana's revisions to 326 IAC 8–12–4 require offsets of less than 0.004167 tons VOC per summer day. Therefore, the VOC emissions increase associated with the revisions of 326 IAC 8–12–4 are more than offset by the VOC emission reductions attributed to reductions in AIM coatings emissions.

In an earlier submittal, Indiana requested to use a separate portion of available offsets from Indiana's AIM rule to offset removal of Stage II gasoline vapor recovery requirements for the years 2014 and 2015. EPA finalized approval of that SIP submittal on June 9, 2016 (81 FR 37160). For the year 2014, EPA's final rulemaking relevant to the Stage II rule uses offsets from Indiana's AIM rule of 0.001829695 tons VOC per summer day, and for 2015, that same rulemaking uses offsets from Indiana's AIM rule of 0.002250149 tons VOC per summer day. That rulemaking relevant to Stage II uses no offsets for 2016 or future years.

Indiana's revised version of 326 IAC 8–12–4 has an effective date of June 21, 2015, so offsets are necessary for 2015 and future years. For 2015, IDEM identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, EPA's proposed rulemaking relevant to Stage II uses offsets of 0.002250149 tons VOC per summer day, and this rulemaking relevant to 326 IAC 8–12–4 uses offsets of 0.004167 tons VOC per summer day. Therefore, offsets from Indiana's AIM rule of 0.285582851 tons VOC per summer day remain available for future use. For 2016 and future years, IDEM identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, EPA's proposed rulemaking relevant to Stage II uses no offsets, and this rulemaking relevant to 326 IAC 8–12–4 uses offsets of 0.004167 tons VOC per summer day. Therefore, offsets from Indiana's AIM rule of 0.287833 tons VOC per summer day remain available for future use.

Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the offsets from VOC reductions in AIM coatings emissions in Clark and Floyd counties, EPA has concluded that the revisions of 326 IAC 8–12–4 do not interfere with southeast Indiana's ability to demonstrate compliance with the 1997 ozone NAAQS or 2008 ozone NAAQS.

EPA also examined whether the revisions of 326 IAC 8–12–4 will interfere with attainment of any other air quality standards. Lake and Porter counties are designated attainment for all standards other than ozone, including sulfur dioxide and nitrogen dioxide. Clark and Floyd counties are designated attainment for all standards other than ozone and particulate matter.[1] For the reasons discussed above, EPA has no reason to believe that the revisions will cause the areas to become nonattainment for any of these pollutants. In addition, EPA believes that the revisions will not interfere with the areas' ability to meet any other CAA requirement.

Based on the above discussion and the state's section 110(l) demonstration, EPA has concluded that the revisions to 326 IAC 8–12–4 will not interfere with attainment or maintenance in the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS, the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone NAAQS, or the Chicago-Gary-Lake County, IL-IN maintenance area for the 1997 ozone NAAQS, and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l). Also, as stated in the previous section, the antifouling coating limit satisfies RACT.

III. What action is EPA taking?

EPA finds that the revision will not interfere with any applicable CAA requirement. For that reason, EPA is approving, as a revision to the Indiana ozone SIP, a revised version of 326 IAC 8–12–4 submitted by IDEM on July 17, 2015.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 24, 2016 without further notice unless we receive relevant adverse written comments by September 22, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 24, 2016.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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[1] Clark and Floyd counties are currently designated nonattainment for the 1997 Annual fine particulate matter ($PM_{2.5}$) standard. While VOC is one of the precursors for particulate matter (NAAQS) formation, studies have indicated that in the southeast, which includes the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS, emissions of direct $PM_{2.5}$ and the precursor sulfur oxides are more significant to ambient summertime $PM_{2.5}$ concentrations than emissions of nitrogen oxides and anthropogenic VOC. See, *e.g.*, Journal of Environmental Engineering-Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States (June 24, 2009), available at: *http://www.journals.elsevier.com/journal-ofenvironmental-management*. Currently, Clark and Floyd counties are not designated nonattainment for any of the other criteria pollutants (*i.e.* sulfur dioxide, nitrogen dioxide, lead or carbon monoxide) and those pollutants are not affected by the removal of Stage II requirements.

[2] 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for 8–12–4 under "Article 8. Volatile Organic Compound Rules" "Rule 12. Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA Approval date	Notes
* *	*	*	*	*
	Article 8. Volatile Organic Compound Rules			
* *	*	*	*	*
	Rule 12. Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties:			
* *	*	*	*	*
8–12–4	Volatile organic compound emissions limiting requirements.	06/21/2015	08/23/2016, [insert **Federal Register** citation].	
* *	*	*	*	*

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[FR Doc. 2016–20016 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 16–17]

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) allocates the responsibilities of video programming distributors (VPDs) and video programmers with respect to the provision and quality of closed captions on television programming, with each entity responsible for closed captioning issues that are primarily within its control; amends the Commission's captioning complaint procedures to include video programmers in the handling of complaints; and requires video programmers to register contact information and certify compliance with captioning obligations directly with the Commission.

DATES: Effective September 22, 2016, except for 47 CFR 79.1(g)(1) through (9), (i)(1) through (3), (j)(1) and (4), (k)(1)(iv), and (m) of the Commission's rules, which contain information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Disability Rights Office, Consumer and Governmental Affairs Bureau, at phone: (202) 418–2235 or email: *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking* Second Report and Order (*Second Report and Order*), document FCC 16–17, adopted on February 18, 2016, and released on February 19, 2016. The full text of document FCC 16–17 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document FCC 16–17 can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/general/disability-rights-office-headlines.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 16–17 contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 16–17 as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." *See Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc.*, Petition for Rulemaking, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, published at 79 FR 17093, March 27, 2014 (Further Notice of Proposed Rulemaking) and 79 FR 17911, March 31, 2014 (Report and Order) (references are to the *Closed Captioning Quality Order* when discussing parts of the Report and Order, and to the *Closed Captioning Quality Further Notice* when discussing parts of the Further Notice of Proposed Rulemaking).

Synopsis

1. Closed captioning is a technology that provides visual access to the audio content of video programs by displaying this content as printed words on the television screen. In 1997, the Commission, acting pursuant to section 713 of the Communications Act (the Act), 47 U.S.C. 713, adopted rules regarding closed captioning on television. On February 24, 2014, the Commission adopted the *Closed Captioning Quality Order* in which, among other things, it placed responsibility for compliance with the non-technical closed captioning quality standards on (VPDs) while simultaneously releasing the *Closed Captioning Quality Further Notice* to seek comment on, among other issues, extending some of the responsibilities for complying with the closed captioning quality standards to other entities involved in the production and delivery of video programming. On December 15, 2014, the Commission released a Second Further Notice seeking to supplement the record in this proceeding in response to comments received on the *Closed Captioning Quality Further Notice. Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking,* Second Further Notice of Proposed Rulemaking, published at 79 FR 78768, December 31, 2014 (*Closed Captioning Quality Second Further Notice*).

2. *Responsibilities of VPDs and Video Programmers.* In its *1997 Closed Captioning Report and Order,* the Commission placed sole responsibility for compliance with its television closed captioning rules on VPDs. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* Report and Order, published at 62 FR 48487, September 16, 1997 (*1997 Closed Captioning Report and Order*). At that time, the Commission concluded that holding VPDs responsible would most expeditiously increase the availability of television programming with closed captions and promote efficiency in the Commission's monitoring and enforcement of its captioning rules. At the same time, the Commission recognized the Commission's jurisdiction, under section 713 of the Act, over both video programming providers *and* owners to ensure the provision of closed captioning of video programming, and noted its expectation that both "owners and producers will be involved in the captioning process."

3. In the *Closed Captioning Quality Order,* the Commission similarly placed the responsibility for compliance with the non-technical closed captioning quality standards on VPDs. However, recognizing that the creation and delivery of quality closed captioning is not solely within the control of VPDs and that video programmers play a "critical role" in providing closed captions to viewers, the Commission stated that it would allow a VPD to satisfy its obligations with respect to the caption quality rules by obtaining or making best efforts to obtain

certifications on captioning quality from its video programmers that such programmers are in compliance with the Commission's quality standards or related best practices. At the same time, as noted above, the *Closed Captioning Further Notice* sought comment on whether the Commission should revise its rules to allocate responsibilities for compliance with the television closed captioning obligations, including the obligation to provide quality captions, among various entities involved in the production and delivery of video programming. To this end, among other things, the Commission also sought comment on a specific proposal by Comcast/NBC Universal (Comcast) for a "burden-shifting enforcement model" that would place the initial burden of addressing captioning matters on VPDs, but then extend some captioning responsibilities to video programming owners (VPOs).

4. The Commission concludes that the obligations associated with compliance with the Commission's closed captioning quality rules shall be divided between VPDs and video programmers, making each entity responsible for closed captioning quality issues that are primarily within its control. It further concludes that the responsibilities associated with ensuring the provision of closed captions on television shall remain primarily with VPDs, but amends its rules to also hold video programmers responsible for ensuring the insertion of closed captions on all their nonexempt programming. The Commission also concludes that the video programmer certifications that video programmers must now make widely available to VPDs should instead be filed with the Commission.

5. *Definitions of Video Programmers and Video Programming Owners.* The *Closed Captioning Quality Order* defined a video programmer as "[a]ny entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming," noting that such programmers are a subset of VPPs. The *Closed Captioning Quality Further Notice* also noted that the Commission has defined VPOs for purposes of requiring captions on video programming delivered via Internet protocol, in part, as "any person or entity that '[l]icenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol.'" The *Captioning Quality Further Notice* sought comment on whether the definition of video programmer adopted in the *Closed Captioning Quality Order* is sufficiently broad in scope or whether the Commission should expand the definition to cover other categories of entities, and if so, which entities. The Commission also sought comment on whether and how the Commission should define VPOs with respect to the television closed captioning rules.

6. Document FCC 16–17 applies the definition of video programmer adopted in the *Closed Captioning Quality Order* without change. That definition does not exclude entities that provide programming for distribution to locations other than the home; rather it merely makes the intent to distribute to residential households a criterion of the definition. In other words, if an entity intends for its programming to be distributed to residential households, the entity will meet the definition of a "video programmer" and will be covered by the Commission's captioning rules, even if the video programmer's programming also reaches devices, such as tablets and other mobile devices that can be used outside the home.

7. Document FCC 16–17 defines VPO, for purposes of television captioning, as any person or entity that either (i) licenses video programming to a VPD or provider that is intended for distribution to residential households; or (ii) acts as the VPD or VPP, and also possesses the right to license video programming to a VPD or VPP that is intended for distribution to residential households. As is the case with video programmers, an entity will be considered a VPO if it licenses or possesses the right to license programming that is intended for distribution to residential households, even if the programming is also distributed to devices that are not located in the home. Accordingly, the captioning rules will cover video programming that is provided by such VPOs to VPPs and VPDs and distributed over VPD systems, even if the VPO's programming reaches devices, such as tablets and other mobile devices that may or may not be located in the home.

8. *Commission Authority under Section 713 of the Act.* The Commission reaffirms determinations, made in the *1997 Closed Captioning Report and Order* and the *Closed Captioning Quality Order,* that the Commission has authority under section 713 of the Act to impose obligations for compliance with the Commission's closed captioning rules on both VPDs and video programmers. Section 713 of the Act authorizes the Commission to ensure the provision of closed captioning of video programming by providers and *owners* of video programming. Section 713(b)(2) of the Act directs the Commission to prescribe regulations that "shall ensure" that "video programming providers or *owners* maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions." Additionally, various subsections of section 713(d) authorize exemptions for both VPPs and program owners. The legislative history of section 713 of the Act further reflects Congress's intent to extend the Commission's authority over captioning of video programming to various entities involved in the production and delivery of video programming, including the distributors and owners of such programs, recognizing that "[i]t is clearly more efficient and economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program.". H.R. Rep. No. 104–204, 104th Cong., 1st Sess. (1995) at 114.

9. The Commission has long recognized its jurisdiction under section 713 of the Act to impose closed captioning obligations on both VPDs and video programmers. The Commission referenced its authority in the *1997 Closed Captioning Report and Order* and the *Closed Captioning Quality Order,* and extended certain captioning responsibilities to VPOs in the *IP Captioning Report and Order,* which created requirements for captioned television programs to be displayed with captions when delivered via Internet protocol. *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* published at 77 FR 19480, March 30, 2012 (*IP Captioning Report and Order*). There, the Commission concluded that placing obligations on VPOs would ensure that the Commission could hold a responsible party accountable for violations of the Twenty-First Century Communications and Video Accessibility Act (CVAA). Public Law 11–260, 124 Stat. 2751 (2010), *technical corrections,* Public Law 111–265, 124 Stat. 2795 (2010); *IP Captioning Report and Order.* Similarly, changes made to the Commission's requirements for the presentation of accessible emergency information on television added video programming providers, which includes program owners, as parties responsible (along with VPDs) for making such information accessible to individuals

who are blind or visually impaired. The Commission ruled that the entity that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, whether that entity is the VPD or VPP. *In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order and Further Notice of Proposed Rulemaking, published at 78 FR 31800, May 24, 2013 (*2013 Emergency Information Order*) (amending 47 CFR 79.2). Document FCC 16–17 reaffirms that section 713 of the Act gives the Commission jurisdiction to ensure the provision of closed captioning of video programming by both VPDs *and* video programmers.

10. *Responsibilities for Ensuring Captioning Quality.* The Commission concludes that it is appropriate to allocate responsibility for compliance with the closed captioning quality rules between VPDs and video programmers by placing responsibility on each entity for those aspects of closed captioning quality over which they primarily have control. The Commission reaches this conclusion because video programmers exert the most direct control over the creation of closed captions, and thus, as compared to VPDs, can exercise greater control over the non-technical quality components of closed captioning. At the same time, VPDs primarily have control over the technical aspects of captioning quality related to the pass-through and distribution of programming to end users.

11. There are a number of tasks associated with the provision of quality closed captions performed by video programmers. These entities "enter into contracts with captioning vendors, control when programming is delivered to captioning vendors to be captioned, and incorporate captioning with programming for delivery to VPDs." *See Closed Captioning Quality Order.* The critical role that video programmers play in creating quality captioning justifies changing the allocation of responsibility for compliance with the caption quality requirements. The Commission thus affirms the finding made in the *Closed Captioning Quality Order* that "video programmers typically are the entities with the most direct control over the quality of closed captioning of their program." It is for this reason that the Commission believes that assigning some responsibility for the quality of closed captioning directly to video programmers will more efficiently and effectively achieve compliance with the Commission's closed captioning quality requirements.

12. VPDs receive programs with the embedded captions supplied by video programmers, and while VPDs have an obligation to ensure that their technical equipment is capable of passing through program signals with captions in a manner that does not adversely affect the non-technical quality components (accuracy, synchronicity, completeness and placement), the record shows that video programmers are responsible in the first instance for making sure that captions meet these quality components—*i.e.,* at the time when programmers initially arrange for the inclusion and insertion of such captions on their programs. Video programmers thus have primary control over ensuring that the non-technical quality standards are met. In addition, allocating captioning quality responsibilities between VPDs and video programmers will be more efficient and effective than attempting to reach video programmers indirectly through their contracts with VPDs. The Commission concludes that the responsibilities imposed by the contractual arrangements between these entities will not be as effective or efficient as direct responsibility on the part of video programmers to achieve compliance with the Commission's new closed captioning quality obligations.

13. First, the record shows that contractual arrangements between VPDs and video programmers may not be fully effective to ensure that video programmers will provide quality closed captions. Financial constraints and lack of influence may impede a VPD's ability to enforce agreements where violations of the captioning quality standards occur. Even in those instances in which a VPD is able to enforce its contractual agreement, the video programmer may decide to simply indemnify the VPD rather than correct the captioning quality problem.

14. The Commission concludes that having VPDs and video programmers share captioning quality responsibilities is likely to improve the efficacy of the complaint process because it will assign responsibility to the entity most able to effectively resolve the complaint. In addition, by allowing the Commission to take enforcement action against video programmers as well as VPDs, it will create incentives for both entities to take actions within their control to resolve quality problems swiftly and to the satisfaction of consumers. The record in this proceeding reveals that captioning quality problems can stem from the actions or inactions of either VPDs or video programmers. The new procedures adopted in this order for resolving captioning quality complaints consider this fact, and utilize the established relationship between VPDs and programmers, as well as VPDs and consumers, to simplify the resolution of complaints for consumers. In this regard, to the extent that a VPD is responsible for captioning problems, under a regulatory scheme of divided responsibility, the VPD will remain responsible for rectifying those problems. Likewise, video programmers will remain responsible for addressing captioning problems primarily within their control.

15. The Commission amends its rules to require video programmers to ensure that closed captioning data provided to VPDs complies with the Commission's closed captioning quality standards. The Commission will also continue to require VPDs to pass through programming with the original closed captioning data intact, in a format that can be recovered and displayed by consumers. Thus, under the new rules, video programmers will be responsible for closed captioning quality problems that stem from producing the captions, as well as transmission of the captions by the video programmers to the VPDs up to when the programming is handed off to the VPDs. VPDs will be responsible for closed captioning quality problems that are the result of faulty equipment or the failure to pass through closed captioning data intact. As a result, a VPD will be held responsible for a violation of the caption quality rules when the circumstances underlying the violation are primarily within the control of the VPD, and a video programmer will be held responsible for a violation of the caption quality rules when the circumstances underlying the violation are primarily within its control. Assigning liability in this manner will allow VPDs and video programmers to focus their resources on the captioning transmission processes over which they have the most control, thereby increasing their individual incentives to provide quality closed captions.

16. *Responsibilities for the Provision of Captioning.* Section 79.1(b) of the Commission's rules currently places on VPDs the responsibility for ensuring the provision of closed captions on non-exempt television programs. The *Closed Captioning Quality Further Notice* sought comment on whether the

Commission should revise this rule to allocate some of this responsibility to other programming entities, such as video programmers.

17. The Commission concludes that the better approach for ensuring the provision of closed captions on television is to continue to hold VPDs primarily responsible for this obligation on the programming they carry, but to also hold video programmers responsible where they fail to provide captions on non-exempt programming. The Commission reaches this conclusion because it believes that its prior policy of placing sole responsibility on VPDs for the provision of closed captions on television programs failed to consider fully the significant role that video programmers play in the provision of captions on their video programming. Given that video programmers have control over the provision of closed captioning on programs they make available to VPDs for distribution to viewers, the Commission believes that it would be more effective and efficient to hold video programmers accountable for ensuring the insertion of closed captions on all of their programming that is not exempt, and the Commission amends § 79.1(b) of its rules to include the responsibilities of video programmers.

18. Yet, because the VPDs have an important role in the distribution of captioned programming, the Commission will maintain its current rules requiring VPDs to remain primarily responsible for ensuring the provision of closed captions on their programming, including the obligation to pass through programming with the original closed captioning data intact, in a format that can be recovered and displayed by consumers. The Commission believes that allocating responsibilities for the provision of closed captioning in this manner will incentivize entities with the greatest control over each aspect of the closed captioning carriage, transmission and delivery processes to provide closed captions. It also believes that the approach adopted herein will maintain the current incentives for VPDs to ensure that the programming they carry is in compliance with the Commission's rules, while allowing the Commission to reach video programmers in instances where such entities have been non-compliant. The Commission concludes that the ability to hold both video programmers and VPDs responsible for the carriage of closed captions will encourage both parties to work together and thereby ensure greater access to television programming for people who are deaf and hard of hearing.

19. The Commission further concludes that this approach will respond to requests by commenters to eliminate a potential "liability gap" in the Commission's captioning rules, that they claim has arisen by permitting VPDs to rely on certifications from programming suppliers to demonstrate compliance with the Commission's rules. Under the current rules, a VPD may rely on a certification from the programming supplier, even when "a programming source falsely certifies that the programming delivered to the distributor meets the Commission's captioning requirements if the distributor is unaware that the certification is false." 47 CFR 79.1(g)(6). Moreover, because the current rules do not assign responsibility to video programmers, they are not held accountable even where a video programmer either fails to provide a certification, provides a false certification, or simply fails to provide the required captioning. The Commission's decision to hold VPDs primarily responsible for the provision of closed captioning while allocating some responsibility to video programmers will ensure that the responsible entities are held accountable when closed captioning is not provided and will better enable the Commission to fulfill Congress's intent to ensure the accessibility of video programming.

20. *Video Programmer Certification.* Because of the decision to allocate responsibility between video programmers and VPDs for the quality and provision of closed captioning, the Commission concludes that its rules governing these certifications should be amended to (1) make such certifications mandatory and (2) require video programmers to file these certifications with the Commission. At present, the Commission's rules provide for two separate types of video programmer certifications in the closed captioning context.

21. The first type of certification is under § 79.1(g)(6) of the Commission's rules, which provides that VPDs may rely upon certifications from programming suppliers, including programming producers, programming owners, network syndicators and other distributors, to demonstrate a program's compliance with the captioning provision rules. This section goes on to state that VPDs will "not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets [the Commission's] captioning requirements if the distributor is unaware that the certification is false." 47 CFR 79.1(g)(6). Under the Commission's current rules, there is no affirmative obligation on the part of VPDs to obtain such certifications or on programming suppliers to provide them. Additionally, the Commission's rules simply permit a VPD to rely on these certifications to prove that there was no underlying obligation to caption the programming received. This is the case even if the certification received is false (unless the VPD was aware of such falsehood).

22. The second type of programmer certification, which VPDs must make best efforts to obtain, was adopted by the Commission in the *Closed Captioning Quality Order,* and is contained in § 79.1(j)(1) of the Commission's rules. Under this rule, a VPD must exercise best efforts to obtain one of the following certifications from each video programmer with respect to the programming supplied to the VPD: (i) That the video programmer's programming satisfies the caption quality standards, *see* 47 CFR 79.1(j)(2) (stating the requirements with regard to captioning quality standards); (ii) that in the ordinary course of business, the video programmer has adopted and follows the Best Practices for video programmers with respect to captioning quality, *see* 47 CFR 79.1(k)(1) (stating the specific requirements with regard to Best Practices); or (iii) that the video programmer is exempt from the closed captioning rules, under one or more properly attained exemptions. If a video programmer claims an exemption from the captioning rules, it must also specify the exact exemption. 47 CFR 79.1(j)(1). In addition, § 79.1(k)(1)(iv) of the Commission's rules requires a video programmer that adopts Best Practices to certify to its VPDs that it has adopted and is following Best Practices for video programmers with respect to quality. Section 79.1(j)(1) and (k)(1)(iv) of the Commission's rules requires that the video programmer make this certification widely available, with § 79.1(j)(1) of the Commission's rules requiring that the video programmer do so within 30 days after receiving a written request to do so from a VPD.

23. In the *Closed Captioning Quality Second Further Notice* the Commission sought comment on the need to alter its video programmer certification requirements if it extends some responsibilities for compliance with its closed captioning rules to video programmers. Specifically, the Commission asked whether it should amend § 79.1(j)(1) of its rules to require video programmers to file their certifications on caption quality with the Commission (rather than making

such certifications widely available through other means) and whether it should amend § 79.1(k)(1)(iv) of its rules to make the filing of certifications with the Commission part of video programmers' Best Practices. The Commission also sought comment on whether it should amend § 79.1(g)(6) of its rules to require video programmers to file certifications with the Commission that they are in compliance with the Commission's rules for the provision of closed captioning.

24. The Commission concluded that changing the certification processes to require video programmers to provide certifications to the Commission of their compliance with the Commission's rules regarding the provision and quality of closed captions is necessary to effectively implement the new apportionment of the closed captioning obligations. To better ensure compliance with the rules and simplify the certification process, the Commission revises its certification processes to collapse the certification requirements contained in § 79.1(g)(6), (j)(1), and (k)(1)(iv) of its rules into a single rule that, with respect to non-exempt programming, makes mandatory the obligation for each video programmer to submit to the Commission a certification that its programming (1) is in compliance with the obligation to provide closed captioning and (2) either complies with the captioning quality standards or adheres to the Best Practices for video programmers with respect to captioning quality. In the event that some or all of the programming in question is exempt under one or more of the exemptions set forth in the Commission's rules, in lieu of the above certification, the video programmer must submit a certification attesting to such exemption and specifying each category of exemption that is claimed. The Commission now requires video programmers to file their certifications with the Commission when they first launch and on an annual basis, on or before July 1 of each year, and to use the Commission's web form filing system for such submissions.

25. By amending the Commission's rules to make certification as to the provision and quality of closed captions by video programmers mandatory, the Commission will hold video programmers accountable for their certifications, *e.g.*, where a submitted certification is false or a programmer fails to provide the requisite certifications. A video programmer's failure to submit a certification or submission of a false certification will be deemed a violation of the Commission's rules that is separate from any violations related to the failure to provide quality captions.

26. The Commission concludes that requiring video programmers to file their certifications with the Commission, rather than with VPDs (as currently required), also will create greater efficiencies because it will create a single repository for all video programmer certifications, providing greater transparency and ease of reference for video programmers, consumers and VPDs. Moreover, this approach eliminates the need to rely on VPDs to obtain certifications from video programmers, and for VPDs to undertake the task of locating and collecting such certifications.

27. Because VPDs will remain primarily responsible for the provision of closed captioning on the non-exempt programming that they carry, certifications from video programmers will be necessary to inform VPDs of the extent to which the programming that they carry contained closed captions upon receipt. VPDs can then rely on these certifications to prove compliance, so long as they do not know or do not have reason to know a certification is false and so long as the VPDs pass through such captions intact to viewers. Requiring video programmers to provide certifications regarding their compliance with the closed captioning quality standards or Best Practices will help bring to their attention their new responsibilities, and thereby help to ensure quality closed captions. The process of having to prepare and provide the certification will help alert video programmers of the need to comply with the captioning quality standards or Best Practices.

28. Compared to the prior certification procedures, the new certification regime (which imposes direct responsibilities on video programmers as well as VPDs) will enhance the Commission's ability to enforce the captioning rules against video programmers and VPDs, and thus ensure the needs of consumers are better served. First, because video programmers were not obligated to provide certifications under the Commission's prior rules (*i.e.*, 47 CFR 79.1(g)(6), (j)(1), and (k)(1)(iv)), the Commission had limited enforcement ability against noncompliant video programmers. Second, some VPDs may be unable to negotiate contractual arrangements obligating video programmers to provide such certifications, due to disparities in negotiating power. Finally, because many video programmers already provide certifications to VPDs under § 79.1(g)(6) and (j)(1) of the Commission's rules, combining these certifications into a single certification to be filed with the Commission should not result in any significant additional burden. Moreover, even if this requirement were to create an added burden on video programmers who are not already providing certifications under the Commission's current rules, the rules the Commission now adopts minimize such burden by only requiring these certifications to be filed annually, on or before July 1 of each year, rather than every time there is a change in programming. In addition, any such burden will be outweighed by the benefits of requiring video programmers to provide certifications, as described in the preceding paragraphs.

29. *VPD Obligations with Respect to Video Programmer Certifications.* The *Closed Captioning Quality Second Further Notice* sought comment on VPDs' obligations pertaining to such certifications, and, specifically, whether to require each VPD to alert its video programmers of the requirement to provide certifications to the Commission, to verify video programmers' compliance with the certification requirement, and to thereafter report to the Commission any failure by a video programmer to comply.

30. Because the rules now adopted by the Commission will hold video programmers directly liable for their failure to provide the required certifications, it is not necessary to make VPDs responsible for informing video programmers about the need to provide certifications, or to require that VPDs check on and report noncompliant video programmers to the Commission. At the same time, VPDs should be allowed to rely upon the certifications from video programmers to fulfill their obligation to ensure the provision of closed captions on the programming they carry. Accordingly, the Commission will allow a VPD to demonstrate compliance with its captioning obligations where it relies on a programmer's certification as to the presence of captions on such programming or that such programming is exempt from the captioning requirements, so long as (1) the VPD passes through the closed captions intact to viewers; and (2) the VPD did not know or did not have reason to know that such certification was false. However, if a VPD carries non-exempt programming without captions from a video programmer that has not provided certification to the Commission, or from a video programmer that has provided a certification that the VPD knew or had reason to know was false, the VPD will be liable for failing to have provided

closed captions on such programming, even if the lack of captions was not due to the VPD's failure to pass through closed captions intact. This will discourage the VPD from ignoring information that should warrant checking into the veracity of the certification, such as the VPD finding the absence of captioning on programming, and hold the VPD accountable for the failure to provide closed captioning on programming that it knows or has reason to know is not exempt from the Commission's rules.

31. These new rules will reduce burdens resulting from compliance with the Commission's captioning quality rules on VPDs. At present, VPDs must search video programmer Web sites and other locations to find the video programmers' "widely available" certifications. The Consumer and Governmental Affairs Bureau's (CGB's) recent experience in verifying the availability of some of these certifications suggest that in some cases these searches have been difficult and have not yielded certifications that video programmers had placed on their Web sites. The new rules will enable VPDs to be able to easily find these certifications on the Commission's Web site.

32. *Complaint Handling.* The Commission's decision in this order to allocate captioning responsibilities between VPDs and video programmers necessitates the establishment of an orderly process for the handling of complaints by each covered entity in order to prevent duplication of efforts, avoid potential confusion about responsibilities, and achieve overall efficiency to ensure the timely resolution of captioning complaints. The Commission concludes that a burden-shifting approach is appropriate for the handling of these complaints.

33. Under the burden-shifting approach, upon receiving a complaint about the quality of captions, a VPD would have the initial burden of conducting an investigation into the source of the problem. The VPD would address the complaint if able to do so, but the burden of addressing the complaint would shift to the video programmer if the VPD learned, after its initial investigation, that the problems raised were not within its control. The Commission believes that this approach appropriately builds on existing video programmer and VPD practices, by which VPDs investigate complaints, determine whether their equipment is causing the problem, and confer with video programmers to identify and resolve closed captioning problems under the video programmers' control. This model can also ensure that the entity most able to remedy the captioning issue will have the responsibility to fix the problem, and the Commission therefore expects that this approach will expedite complaint resolution and result in more effective results for viewers who rely on captions to follow a program's content.

34. The Commission further concludes that it is best to apply the same burden-shifting approach to all types of captioning complaints—rather than apply this approach only to complaints on captioning quality. Employing different processes in the handling of different types of complaints would require the Commission and covered entities to try to predict the source of each complaint's underlying issues before directing the complaint through the appropriate process. This would be difficult given that some complaints may raise both non-technical and technical problems, and ascertaining the underlying causes for such problems often becomes possible only after an investigation into those causes. As a result, attempts to predict the underlying problem at the outset might result in the complaint being referred to the wrong entity and thereby delay its resolution. Accordingly, a uniform complaint and enforcement model for all closed captioning issues on television programming will streamline the rules and clarify all parties' obligations. Under this approach, the video programmer and the VPD will each be responsible for resolving complaints that are the result of problems primarily within each entity's respective control.

35. At present, the Commission's television closed captioning rules allow consumers to file captioning complaints with either the Commission or with the VPD responsible for the delivery and exhibition of video programming at issue, within sixty days after the consumer experiences a captioning problem. 47 CFR 79.1(g)(1). Because of the existing relationship that VPDs have with their subscribers, the approach provides a single point of contact for consumers and allows utilization of the existing VPD infrastructure for receiving, processing, and resolving closed captioning complaints. Allowing consumers to file complaints with either the VPD or the Commission eliminates the need for consumers to identify the video programmer with whom consumers generally have no direct relationship. It also eliminates the need for consumers to figure out the party responsible for the problem they are experiencing—for example, whether it was a pass through problem caused by the VPD or a non-technical quality problem caused by the video programmer. Accordingly, the captioning complaint process that the Commission adopts will continue to allow consumers to file closed captioning complaints either with the Commission or with the VPD. If the complainant chooses to file with the VPD, but fails to receive a timely response or is not satisfied with that response, the consumer may subsequently file his or her complaint with the Commission.

36. *Complaints Filed with the Commission—Complaint Content.* In the *Closed Captioning Quality Order,* the Commission adopted a rule requiring the following information to be provided in an informal complaint regarding captioning quality as a prerequisite to the Commission forwarding such complaint to a VPD: (1) The channel number; (2) the channel name, network, or call sign; (3) the name of the multichannel video programming distributor (MVPD), if applicable; (4) the date and time that the captioning problem occurred; (5) the name of the program involved; and (6) a detailed description of the problem. 47 CFR 79.1(j)(4). The Commission explained that this information is necessary to enable a programming entity to investigate and resolve the complaint. Because the same rationale applies to all closed captioning complaints, whether or not related to closed captioning quality, the Commission extends the requirement to provide this information to all television closed captioning complaints. The Commission directs CGB to provide assistance to consumers who may experience difficulties gathering any of this required information. It further clarifies that all complaints should contain the consumer's identifying information, including the consumer's name, postal address, and other contact information, if available, such as telephone number or email address, along with the consumer's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the consumer).

37. *Complaints Filed with the Commission—Complaint Procedures.* Under the burden-shifting approach that the Commission adopts, when the Commission receives a closed captioning complaint, it will serve the complaint on the named VPD and the appropriate video programmer simultaneously. If the Commission cannot determine the appropriate video

programmer to serve, it will forward the complaint to the VPD and will inform the VPD that the Commission has been unable to determine the appropriate video programmer. Within ten days after the date of such notification, the VPD must respond to the Commission with the name and contact information for the appropriate video programmer, after which the Commission will forward the complaint to the video programmer as well.

38. After being served with a consumer complaint, the VPD must conduct an initial investigation to determine whether the matters raised in the complaint are primarily within its control. Concurrently, the video programmer may voluntarily begin its own inquiry into the source of the captioning problem, but the video programmer is not required to take any action at that time. Forwarding the complaint to both the VPD and video programmer at the outset will help facilitate the swift resolution of complaints because it will allow the video programmer, if it so chooses, to take its own steps toward a resolution while the VPD investigates matters primarily under its control.

39. VPDs will be given flexibility in conducting their initial investigations, in order to allow for differences in equipment and processes among VPDs; however, VPDs will be required to exercise due diligence in their efforts to identify the source of the issue and resolve all matters primarily within their control before shifting responsibility for addressing these matters to their video programmers. To meet this standard and to ensure a thorough investigation into closed captioning problems raised in complaints, the Commission will require VPDs, at a minimum, to take the following actions as part of their investigations: (1) *Program Stream Check:* Capture program streams of the programming network identified in the complaint and check the streams for any caption-related impairments that may have caused the reported problem and to prevent ongoing problems; (2) *Processing Equipment Check:* If there is an issue with the program stream, and there is not prior knowledge as to where the problem originated, check post-processing equipment at the relevant headend or other video distribution facility to determine whether the issue was introduced at the VPD level or was present in the stream when received by the VPD from the video programmer; (3) *Consumer Premises Check:* If the VPD's investigation indicates that the problem may lie with the consumer's customer premises equipment, including the set-top box, check the end user equipment, either remotely, or, if necessary, at the consumer's premises, to ensure there are no issues that might interfere with the pass through, rendering or display of closed captioning. The Commission will defer to the VPD's good faith judgment about whether there is an indication that the problem might lie with the consumer's customer premises equipment and whether it is necessary to go to the consumer's premises to check the equipment. However, in the event of a dispute or an enforcement proceeding, the VPD will have the burden of proving that it conducted a thorough investigation into the closed captioning problems raised in the complaint. Requiring VPDs to take these steps will ensure that a full and effective investigation occurs prior to shifting the complaint handling responsibilities to video programmers. This also is more likely to result in a speedier and efficient resolution of the problems raised in complaints, thereby helping to fulfill Congress's goal to make television programming fully accessible to people who are deaf and hard of hearing.

40. If the VPD's investigation reveals that the closed captioning problem is within the control of the VPD, the VPD must correct the problem and provide a written response to the Commission, the video programmer and the consumer acknowledging such responsibility and describing the steps taken to correct the problem. A complaint must be resolved, and a written response sent, within 30 days after the date the Commission forwards the complaint to the VPD. As required by the Commission's current rules, the VPD's response must provide the Commission with sufficient evidence, including records and documentation, to demonstrate that the VPD is in compliance with the Commission's closed captioning rules. 47 CFR 79.1(g)(5). In this case, no burden-shifting to the video programmer will occur, and the VPD will retain liability for the problem.

41. If the VPD's investigation reveals that the closed captioning problems raised in the complaint are not primarily within the VPD's control and appear to have been present in the program stream when received by the VPD, the burden for addressing the complaint will shift to the video programmer. To shift the burden, the VPD must certify to the Commission, the video programmer, and the consumer that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's rules, and that the problems raised in the complaint are not within its control. In addition, if at any time during the complaint resolution process, the VPD's investigation reveals that the closed captioning problems raised in the complaint were the result of causes not within the VPD's control and also do not appear to be within the video programmer's control, such as a faulty third-party DVR, television, or other third-party device, the VPD must certify to the Commission, the video programmer, and the consumer that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's rules, and that the problems raised in the complaint were caused by a third party device or other causes that appear not to be within the control of either the VPD or the video programmer. The applicable certification may be provided at any time during the VPD's investigation, but no later than 30 days after the date the Commission forwarded the complaint. The requirement for such certification is intended to alleviate concerns that VPDs might perform cursory investigations or inappropriately shift the burden of resolving complaints to video programmers in order to avoid fulfilling their captioning obligations. A VPD that fails to provide a certification or provides an untruthful certification may be subject to immediate enforcement action without first being subject to the compliance ladder. In addition, any video programmer may report to the Commission when, after receiving a certification from a VPD, the video programmer determines that the VPD did not follow all of the steps required by the Commission's rules for investigating a complaint or that the problem described in a complaint is in fact within the VPD's control.

42. After the responsibility for resolving the complaint shifts to the video programmer, the video programmer must investigate and attempt to resolve the closed captioning problem to the extent that doing so is within the video programmer's control. After the responsibility for resolving the complaint shifts to the video programmer, the video programmer will have the burden of proving that the video programmer conducted a thorough investigation into the closed captioning problems raised in the complaint. In addition, while, at this point in the complaint resolution process, the video programmer will take on the primary responsibility for

resolving the closed captioning problem, the Commission will require the VPD to continue to assist the video programmer with resolving the complaint, as needed. Requiring the VPD to remain involved throughout the complaint process will foster collaboration between VPDs and video programmers, and increase the likelihood that the complaint will be swiftly resolved to the satisfaction of the consumer and the Commission.

43. Within 30 days after the date of certification from the VPD, the video programmer must provide a written response to the complaint that either describes the steps taken to rectify the problem or certifies that its investigation revealed that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's rules, and that the problems raised in the complaint are not within its control. Such response must be submitted to the Commission, the VPD, and the consumer, and must provide the Commission with sufficient records and documentation to demonstrate that the video programmer is in compliance with the Commission's rules. *See* 47 CFR 79.1(g)(5). Requiring video programmers to respond within 30 days will ensure that video programmers promptly investigate complaints. If the video programmer reports that it has rectified the problem, this will enable the VPD to conduct additional checks of the program stream if needed to confirm the complaint's resolution, and keep the VPD, the Commission, and the consumer informed so the VPD can know when to close the complaint file.

44. If the video programmer certifies that the program stream contained fully functioning captioning at the time the program stream was handed off to the VPD, and the VPD has not determined that the problem resulted from a third party source, the VPD and the video programmer must then work together to determine the source of the captioning problem. Once the source of the problem is determined, the VPD and video programmer shall each be required to correct those aspects of the problem within its control. The VPD is then required, after consultation with the video programmer, to report to the Commission and the complainant the steps taken to fix the captioning problem. The VPD must submit such information in writing within 30 days after the date that the video programmer certified that the cause of the problem was not within the video programmer's control. Further, the Commission may, during its review of a complaint or the pendency of an enforcement proceeding, request the VPD and the video programmer to provide sufficient documentation to demonstrate compliance with the Commission's rules. Accordingly, VPDs will remain responsible for resolving problems that are within their control, which will help prevent the wasteful duplication of efforts to resolve complaints.

45. *Complaints Filed with the VPD.* Document FCC 16–17 preserves the consumers' long-standing option of filing their captioning complaints directly with their VPDs. *See* 47 CFR 79.1(g)(1) and (4). When a VPD receives a complaint from a consumer, the VPD should investigate the complaint with the same due diligence and in the same manner as required for complaints initially filed with the Commission and later served on VPDs, with a goal of initially determining whether the matter raised in the complaint is within the control of the VPD. If, after conducting its initial investigation, the VPD determines that the issue of the complaint is within its control, it shall take the necessary measures to resolve it, and notify the consumer of such resolution within 30 days after the date of the complaint. If (1) the consumer does not receive a response to the complaint within the 30-day period, or (2) the consumer is not satisfied with the VPD's response, the consumer may file the complaint with the Commission within sixty days after the time allotted for the VPD to respond to the consumer. The Commission believes that VPDs will have sufficient incentives to thoroughly investigate and promptly resolve the complaints that they receive directly from consumers, to reduce the need for such consumers to re-file their complaints with the Commission.

46. In the event that the VPD determines that the issues raised in the complaint are not within its responsibilities, § 79.1(g)(3) of the Commission's rules as currently written requires the VPD to forward the complaint to the responsible programming entity. 47 CFR 79.1(g)(3). The Commission resolves a conflict between § 79.1(g)(3) of its rules and statutory provisions prohibiting the VPD from disclosing a consumer's personally identifiable information (PII) without the consumer's consent. *See* 47 CFR 79.1 (g)(3), 47 U.S.C. 551(c)(1), and 47 U.S.C. 338(i)(4)(A). The Commission will require that if a VPD determines that an issue raised in the complaint is not primarily within the VPD's control, the VPD, within 30 days after the date of the complaint, must either forward the complaint to the video programmer or other responsible entity, such as another VPD, with the consumer's PII—including the consumer's name, contact information, and other identifying information—redacted, or provide the video programmer or other responsible entity with information contained in the complaint sufficient to achieve its investigation and resolution. Such information should include the same type of information necessary for a complaint to be forwarded to a VPD when it is submitted to the Commission—*i.e.,* (1) the channel number; (2) the channel name, network, or call sign; (3) the name of the multichannel video programming distributor (MVPD), if applicable; (4) the date and time that the captioning problem occurred; (5) the name of the program involved; and (6) a detailed description of the problem—to the extent the VPD is in possession of such information. In addition, the VPD must provide the video programmer or other responsible entity with an explanation of why the cause of the captioning problem is not primarily within the control of the VPD. The Commission expects that requiring a VPD to forward the complaint with the consumer's PII redacted or to forward a description of the complaint's material details will resolve the outstanding regulatory conflict without the need for back-and-forth communications between the VPD and the consumer that otherwise might have been needed for resolution of the complaint.

47. When forwarding the complaint or a description of the complaint, the VPD must also assign a unique identifying number ("complaint ID number") to the complaint, and transmit that number to the video programmer or other responsible entity along with the complaint or a description of the complaint. The Commission further requires the VPD to inform the consumer that the complaint has been forwarded, along with the complaint ID number and the name and contact information of the video programmer or other responsible entity to whom the complaint was forwarded, at the same time that the complaint is forwarded to the video programmer or other responsible entity. Providing information to consumers about the status of their complaints will enhance the transparency of the complaint resolution process, and avoid the situation in which a VPD responds to a complaint by shifting blame for a captioning problem to another entity while refusing to identify such entity publicly. Additionally, providing consumers with both the complaint ID

number and the video programmer's or other responsible entity's contact information will enable the consumer to contact a video programmer or other responsible entity directly and inquire about the status of his or her complaint if so desired. The VPD must also explain to the consumer that if the consumer wishes to follow up with the video programmer, the consumer will need to provide the video programmer with the name of the VPD as well as the complaint identification number.

48. Once a video programmer or other responsible entity receives a complaint and notification from a VPD that the issue described in the complaint is outside the VPD's control, the burden will shift to the video programmer or other responsible entity to investigate and resolve the complaint. However, as for complaints initially filed with the Commission, the Commission will require the VPD to continue to assist the video programmer or other responsible entity in resolving the complaint as needed and to conduct additional checks of the program stream to confirm resolution of the problem, upon notification from the video programmer or other responsible entity that the problem has been resolved.

49. The video programmer or other responsible entity must respond in writing to the VPD within 30 days after the forwarding date of the complaint from the VPD, in a form that can be forwarded to the consumer. The VPD must then forward this response to the consumer within ten days after the date of the video programmer's or other responsible entity's response. If the video programmer or other responsible entity fails to respond to the VPD within 30 days after the forwarding date of the complaint from the VPD, the VPD must inform the consumer of the video programmer's or other responsible entity's failure to respond within 40 days after that forwarding date.

50. If the video programmer or other responsible entity fails to respond to the VPD within the time allotted, or if the VPD fails to forward the video programmer's or other responsible entity's response to the consumer, or if the consumer is not satisfied with that response, the consumer may file the complaint with the Commission within sixty days after the time allotted for the VPD to either forward the video programmer's or other responsible entity's response to the consumer or inform the consumer of the video programmer's or other responsible entity's failure to respond. Upon receipt of the complaint from the consumer, the Commission will forward such complaints to the appropriate VPD and video programmer, and the VPD and video programmer shall handle such complaints, as governed by the rules applicable to complaints filed with the Commission.

51. The Commission requires the VPD to remain involved in the resolution of complaints that are not within the VPDs' control because the VPD is the entity with which a complainant has a direct commercial relationship, and thus the VPD should remain the primary point of contact for the complainant even when the complaint is forwarded to the video programmer. Unlike video programmers, VPDs are the last link in the distribution chain and either receive direct payment from consumers for services rendered or provide programming over the public airwaves. Having VPDs forward responses from video programmers or other responsible entities to consumers will create a seamless process for consumers, allowing them to receive a response from the business entity with which they are familiar, and with which they initially filed their complaint. Also, as a practical matter, because the Commission requires the VPD to redact the consumer's PII, including the consumer's name and address, when forwarding a complaint to a video programmer or other responsible entity, the video programmer or other responsible entity will not have the necessary contact information to respond directly to the consumer. Finally, the Commission is imposing timelines on (1) the forwarding of complaints by VPDs, (2) the response by the video programmer or other responsible entity to the VPD, and (3) the forwarding of the response by the VPD to the consumer. The Commission therefore concludes that assigning to the VPD the responsibility of reporting the resolution to the consumer should not delay the provision of such notification.

52. In the event that the video programmer, other responsible entity, or VPD fails to meet any deadlines for responses to the consumer's complaint or if such responses do not satisfy the consumer, the consumer may file the complaint with the Commission within 60 days after the time allotted either for the VPD to respond to the consumer or for the VPD to forward the video programmer's or other responsible entity's response to the consumer, whichever is applicable. If a consumer re-files the complaint with the Commission after initially filing the complaint with the VPD, the Commission will forward the complaint to the appropriate VPD and the video programmer, and each such entity must follow the complaint handling processes for complaints filed with the Commission as outlined above.

53. *Compliance Ladder.* In the *Closed Captioning Quality Order,* the Commission adopted a "compliance ladder" that allows broadcast stations to take corrective actions to demonstrate compliance with new enhanced electronic newsroom technique (ENT) procedures prior to being subject to enforcement action. The Commission reasoned that this approach would provide these entities with "ample opportunities to improve their captioning, especially if their current practices are deficient." *Closed Captioning Quality Order.* In the *Closed Captioning Quality Further Notice,* the Commission sought comment on whether to similarly allow VPDs and video programmers to assert a safe harbor to demonstrate compliance through corrective actions prior to being subject to enforcement action, in the event certain obligations for compliance with the captioning quality standards are placed on each of these entities.

54. In document FCC 16–17, the Commission adopts a compliance ladder for the captioning quality rules, including rules addressing quality issues related to the pass-through of captions, which is similar to the ladder adopted for the enhanced ENT rules. It will not apply this compliance ladder to other captioning requirements, including the provision of captioning, equipment monitoring and maintenance, registration and certification. Rather, the Commission concludes that its current practice of addressing the latter types of concerns through the informal complaint process, while retaining the option to refer such matters for enforcement action as appropriate, has been effective in achieving resolution of these concerns.

55. The Commission will continue to entertain individual informal complaints of noncompliance with the Commission's closed captioning quality rules in accordance with the complaint procedures outlined in document FCC 16–17. However, for captioning quality complaints received by the Commission that indicate a pattern or trend of noncompliance with its captioning quality rules, the Commission adopts a compliance ladder that is similar to that used for addressing noncompliance with its rules governing the enhanced ENT procedures. By focusing on patterns or trends rather than individual reports of closed captioning quality problems, use of this compliance mechanism will afford VPDs and video programmers opportunities to correct such problems without Commission enforcement action. In this manner, a

compliance ladder will enable parties to more quickly address and remedy problems without worrying that in so doing they may be subject to fines or forfeitures.

56. Accordingly, the Commission adopts the following compliance ladder to be applied when consumer complaints received by the Commission indicate a pattern or trend of noncompliance with the Commission's rules governing the quality of television closed captioning on the part of either the VPD or the video programmer. The Commission will apply a broad definition of "pattern or trend" when determining whether the compliance ladder is triggered. For example, a "pattern or trend" may be found when a particular entity is subject to a series of complaints over time about caption quality problems or failures or where a particular entity is subject to a large volume of complaints that suggests widespread quality problems or failures, even if they occur over a relatively short span of time. A pattern or trend of consumer complaints, even if about different programs or different types of captioning failures by the same entity, may reflect a system breakdown in that entity's processes sufficient to trigger this approach. In other words, the Commission may discern a pattern or trend in a series of complaints about the same or similar problems or in a multiplicity of complaints about unrelated problems.

- If the Commission notifies a VPD or video programmer that the Commission has identified a pattern or trend of possible noncompliance with the Commission's rules governing the quality of closed captioning by the VPD or video programmer, the VPD or video programmer shall respond to the Commission within 30 days after the date of such notice regarding such possible noncompliance, describing corrective measures taken, including those measures the VPD or video programmer may have undertaken in response to informal complaints and inquiries from viewers. Multiple complaints about a single incident are not considered a pattern or trend.
- If, after the date for a VPD or video programmer to respond to the above notification, the Commission subsequently notifies the VPD or video programmer that there is further evidence indicating a pattern or trend of noncompliance with the Commission's rules governing the quality of closed captioning, the VPD or video programmer shall submit to the Commission, within 30 days after the date of such subsequent notification, a written action plan describing additional measures it will take to bring the VPD's or video programmer's closed captioning performance into compliance with the Commission's regulations. For example, action plans involve the identification and implementation of longer term measures and may include, but are not limited to, a commitment to train the VPD's or video programmer's personnel, the use of improved equipment, more frequent equipment checks, improved monitoring efforts, and changes in closed captioning vendors or closed captioning procedures. In addition, the VPD or video programmer shall be required to conduct spot checks of its closed captioning performance and report to CGB on the results of such action plan and spot checks 180 days after submission of such action plan.
- If, after the date for submission of the report on the results of an action plan, the Commission finds continued evidence of a pattern or trend of noncompliance with the Commission's rules governing the quality of closed captioning, the Commission will then consider, through its Enforcement Bureau, appropriate enforcement action, including admonishments, forfeitures, and other corrective actions as necessary.

57. The Commission believes that this three-step ladder will provide VPDs and video programmers with the necessary incentives to take corrective action on their own. In particular, the Commission believes that the first step of the compliance ladder, once a pattern or trend of noncompliance is identified, should afford an opportunity for VPDs and video programmers to rectify captioning quality violations on their own and quickly, without the regulatory involvement that would be associated with the second step's required action plan or the third step's enforcement action. However, if the Commission finds that this approach is not effective in ensuring widespread compliance with its television closed captioning quality rules or fulfilling its goal of ensuring full access to television programming as required by section 713(b) of the Act, it may revisit this issue to the extent necessary.

58. The Commission emphasizes that the compliance ladder will not relieve VPDs or video programmers of any of their obligations under the television closed captioning rules. However, to address this concern, the Commission adopts an additional rule allowing CGB to refer a captioning quality rule violation directly to the Enforcement Bureau for enforcement action, or for the Enforcement Bureau to pursue an enforcement action on its own, without first going through the compliance ladder, for a systemic closed captioning quality problem or an intentional and deliberate violation of the Commission's closed captioning quality standards. In making such a determination, CGB or the Enforcement Bureau shall take into consideration all relevant information regarding the nature of the violation or violations and the VPD or video programmer's efforts to correct them.

59. *VPD Registration.* In the *2008 Closed Captioning Decision,* the Commission amended its rules to add § 79.1(i)(3), which requires VPDs to submit contact information for the receipt and handling of both immediate requests to resolve captioning concerns by consumers while they are watching television and closed captioning complaints that consumers file after experiencing closed captioning issues. The 2008 Order explained that VPDs could satisfy this requirement by either filing a hard copy or sending an email. *2008 Closed Captioning Decision.* In 2009, the Commission added an option to allow VPDs to file their contact information directly online via a web form located on the Commission's Web site, in a database called the "VPD Registry." *Closed Captioning of Video Programming,* Order, published at 75 FR 7368, February 19, 2010. Recognizing in the *Closed Captioning Quality Further Notice* that such electronic filings into the VPD Registry would offer the most efficient and accurate means of collecting the requisite information, the Commission sought comment on a proposal to require all contact information required by § 79.1(i)(1) and (2) of its rules be submitted directly to the VPD Registry through the web form method. *Closed Captioning Quality Further Notice.*

60. The Commission finds that requiring VPDs to submit their contact information into the VPD Registry through the web form would also be consistent with the *2011 Electronic Filing Report and Order,* which adopted a policy to require the use of electronic filing whenever technically feasible. *See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* Report and Order, published at 76 FR 24383, May 2, 2011. In light of such technical feasibility, as well as the accuracy and efficiency of this electronic filing method, the Commission amends § 79.1(i)(3) of its rules to require VPDs to submit their contact information required under § 79.1(i)(1) and (2) of its rules directly into the Commission's database through the web form method and to remove as options the alternate

methods of submitting this information to the Commission.

61. *Video Programmer Registration.* In document FCC 16–17, the Commission requires that video programmers file their contact information through a web form located on the Commission's Web site for the handling of written closed captioning complaints by the Commission and by VPDs, and as required for VPDs, to update such information within ten business days of any changes. The video programmer contact information shall include the name of the person with primary responsibility for captioning issues and who can ensure compliance with the captioning rules, and the person's title or office, telephone number, fax number (if there is one), postal mailing address, and email address. The Commission also directs video programmers to submit their required compliance certifications through a web form located on the Commission's Web site, so that such certifications will be readily available to consumers, VPDs, and the Commission. The Commission directs CGB to implement the development of one or more web forms (or to expand the existing VPD Registry) for the filing of video programmer contact information and certifications and to provide guidance to programming entities and the general public on the appropriate use of video programmer contact information found on the Commission's Web site. The Commission also directs CGB to issue a Public Notice to provide such guidance as well as procedures and deadlines for video programmers to file contact information and certifications once the rules go into effect and the Commission's Web site is ready to receive such contact information and certifications.

62. The Commission concludes that it is important for video programmers to register their contact information with the Commission so that it is readily available to the Commission and to VPDs for the expedient and effective handling and resolution of complaints. In particular, for complaints filed directly with a VPD, under the new complaint handling rules, the VPD must have ready access to video programmer contact information so that the VPD can forward the complaint information to the correct video programmer when the VPD ascertains that the source of problem raised in a complaint originated with that programmer. If this information is not available to VPDs, and especially smaller VPDs, such entities may encounter challenges and delays in their efforts to resolve complaints. The filing of video programmer contact information will eliminate such challenges by enabling VPDs to obtain current contact information from a centralized location.

63. Additionally, requiring video programmers to file their contact information with the Commission will help to expedite the resolution of complaints filed directly with the Commission. Because the complaint handling rules that the Commission adopts in this Order require the Commission to forward written complaints to both VPDs and their video programmers, the Commission needs access to video programmer contact information. The Commission also finds that the public availability of video programmers' contact information will increase transparency, aid the complaint process, and thereby facilitate high-quality captioning. For example, the complaint handling rules adopted in document FCC 16–17 require each VPD to inform a consumer when it has forwarded his or her complaint to a video programmer for resolution. If the consumer wishes to contact the video programmer directly regarding his or her complaint after it has been forwarded by the VPD, the Commission's Web site will provide the consumer with the necessary video programmer's contact information to do so.

64. The Commission emphasizes that its actions taken herein are not intended to remove VPDs from the process of resolving consumer complaints. VPDs may be in the best position to take primary responsibility for complaint resolution given the more direct relationship they have with viewers and subscribers, the opportunity for consumers to utilize existing VPD processes for receiving, processing, and resolving closed captioning complaints, and the ability of VPDs to provide a single point of contact for consumers. The Commission's new requirement for video programmers to file contact information with the Commission is intended primarily for use by VPDs and Commission staff for complaint resolution and enforcement purposes, and to facilitate transparency for the public when VPDs forward complaints to programmers for resolution. The Commission encourages consumers to continue filing complaints about captioning with the Commission or VPDs in the interest of achieving faster resolution of their captioning concerns.

65. Finally, the Commission does not think it is necessary, at this time, to require video programmers to make their contact information available on their Web sites or through other means in addition to filing this information in the Commission's database. The Commission finds that its requirement for video programmers to file contact information with the Commission is sufficient to serve its regulatory purposes of making such information available for use primarily by VPDs and Commission staff for complaint resolution and enforcement purposes, and to facilitate transparency for the public when VPDs forward complaints to programmers for resolution. If the Commission finds that its objectives are not effectively achieved by the publication of this information in the Commission's database, it may revisit this decision.

66. *Nonsubstantive Rule Amendments.* More than 18 years have passed since the Commission adopted its regulations governing the closed captioning obligations. For purposes of clarity, the Commission makes two nonsubstantive editorial changes to the rules, which include eliminating certain outdated rule sections and updating the rule nomenclature. First, given that all benchmarks for the phase-in of the closed captioning requirements have passed, the Commission amends 47 CFR 79.1(b)(1) through (4) to eliminate these outdated benchmarks, so that only the fully phased-in captioning requirements remain in the rule. Second, the Commission amends 47 CFR 79.1(e)(9) to reflect the terminology used in this proceeding by making the nonsubstantive nomenclature change that VPDs "ensure the provision of closed captioning" rather than "provide closed captioning."

Final Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the FNPRMs contained in the *Closed Captioning Quality Order and Further Notice* and the *Closed Captioning Quality Second Further Notice* (*Further Notices*). The Commission sought written public comment on the proposals in the two *Further Notices,* including comment on the two IRFAs. No comments were received on the IRFAs incorporated in the two *Further Notices.* The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

68. *Need for, and Objectives of, the Report and Order.* The purpose of the proceeding is to apportion the responsibilities of VPDs and video programmers with respect to the provision and quality of closed captions on television programming to ensure that people who are deaf and hard of hearing have full access to such

programming. The *Second Report and Order* follows the Commission's adoption in 2014 of captioning quality standards for programming shown on television and makes certain modifications to the closed captioning rules after consideration of the comments and reply comments received in response to the *Further Notices*.

69. In document FCC 16–17, the Commission amends its rules to assign responsibility for the *quality* of closed captioning to VPDs and video programmers, with each entity responsible for closed captioning issues that are primarily within its control. Additionally, the Commission maintains current rules that place primary responsibility for the *provision* of closed captioning on television programming on VPDs, but amends them to hold video programmers responsible for a lack of captions where they have failed to provide captions on non-exempt programs. Also, the Commission adopts rules to: (1) Require each video programmer to file with the Commission a certification that (a) the video programmer (i) is in compliance with the rules requiring the inclusion of closed captions, and (ii) either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (b) is exempt from the captioning obligations; if the latter certification is submitted, the video programmer must specify the specific exemptions claimed; (2) allow each VPD to satisfy its obligations regarding the provision of closed captioning by ensuring that each video programmer whose programming it carries has certified its compliance with the Commission's closed captioning rules; (3) revise the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model; (4) establish a compliance ladder for the Commission's television closed captioning requirements that provides VPDs and video programmers with opportunities to take corrective action prior to enforcement action by the Commission; (5) require that each VPD use the Commission's web form when providing contact information to the VPD registry; and (6) require each video programmer to register with the Commission its contact information for the receipt and handling of written closed captioning complaints, and to use the Commission's web form for this purpose.

70. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to the two IRFAs.

71. *Types of Small Entities Impacted:*

- Cable Television Distribution Services
- Direct Broadcast Satellite (DBS) Service
- Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service
- Open Video Services
- Television Broadcasting
- Incumbent Local Exchange Carriers (ILECs)
- Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers
- Electric Power Distribution Companies
- Cable and Other Subscription Programming
- Motion Picture and Video Production
- Closed Captioning Services—Teleproduction and Other Postproduction Services; and Court Reporting and Stenotype Services

72. *Description of Projected Reporting, Record Keeping and other Compliance Requirements.*

- Requires each video programmer to file with the Commission a certification that: (a) The video programmer is in compliance with the rules requiring the inclusion of closed captions, and either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (b) is exempt from the captioning obligations; if the latter certification is submitted, the video programmer must specify the specific exemptions claimed;
- Revises the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model;
- Establishes a compliance ladder for certain of the Commission's television closed captioning requirements that provides VPDs and video programmers with opportunities to take corrective action prior to enforcement action by the Commission;
- Requires that each VPD use the Commission's web form when providing contact information to the VPD registry; and
- Requires each video programmer to register with the Commission its contact information for the receipt and handling of written closed captioning complaints, and to use the Commission's web form for this purpose.

73. Although document FCC 16–17 modifies reporting and recordkeeping requirements with respect to video programmer certifications, it will impose no new or additional requirements in this regard because the new rules will require video programmers to file certifications with the Commission rather than making them widely available as required under the current rules.

74. Document FCC 16–17 modifies the complaint process by adopting a burden-shifting compliance model, which is consistent with the newly adopted assignment of responsibilities to VPDs and video programmers. This model ensures that the party most able to remedy the captioning issue will have the responsibility to fix the problem. This will expedite complaint resolution and result in more effective results.

75. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The Commission believes that it has minimized the effect on small entities while making television programming more accessible to persons who are deaf and hard of hearing. The Commission does not establish different compliance or reporting requirements or timetables with respect to small entities because the importance of ensuring that video programming is accessible to people who are deaf and hard of hearing outweighs the small burdens associated with the new or different regulatory requirements adopted in document FCC 16–17. The Commission already has in place twelve categorical exemptions from its closed captioning requirements, including exemptions intended to benefit small entities, and any entity, including a small entity, may file a request for exemption based upon economic burden. In addition, the Commission's captioning rules generally use performance rather than design standards, and the Commission will publish a compliance guide to explain the new rules to small businesses.

76. The new rules assign responsibilities between VPDs and video programmers in a fair and equitable manner. Although assigning some direct responsibility for the provision and quality of closed captioning to video programmers imposes some new regulatory requirements on small entities that are video programmers, it will relieve burdens on small entities that are VPDs, because the Commission will be able to take direct compliance and enforcement action against video programmers rather than indirect action through VPDs.

77. The requirement for video programmers to file certifications with the Commission regarding compliance with the Commission's rules on the provisioning and quality of closed captioning imposes different reporting and recordkeeping obligations than currently required of video programmers, including small entities.

However, the new rules do not impose additional burdens, because video programmers are required under the existing rules to provide certifications to VPDs and to make such certifications widely available under the Commission's rules. The new rules may ease the burden on video programmers, because video programmers will know to go directly to the Commission's Web site to provide certification and will not need to determine how to make such certification widely available. In addition, the new rules will ease the burden on VPDs, including small entities, and consumers by having all certifications in one easy to find place.

78. The revised procedures for receiving, serving, and addressing closed captioning complaints in accordance with a burden-shifting compliance model imposes different procedural requirements on VPDs, including small entities, and new procedural requirements on video programmers, including small entities. Because the burden-shifting model calls for VPDs and video programmers to each be responsible for closed captioning issues that are within their respective control instead of placing all responsibility on VPDs, the model will ease the burden on VPDs, including small entities, who will be able to shift the burden to video programmers when, after investigation, the VPD determines that the cause of the captioning problem was within the control of the video programmer. This approach will also allow the Commission to more directly and more easily address consumer complaints, thereby benefitting consumers.

79. The establishment of a compliance ladder for the Commission's closed captioning quality requirements, a process that provides VPDs and video programmers, including small entities, with opportunities to take corrective action prior to enforcement action by the Commission for certain captioning violations, will ease the burden on VPDs and video programmers, including small entities, because use of the compliance ladder will be more informal and less time-consuming than a formal enforcement proceeding.

80. The requirement that all contact information submitted by VPDs to the Commission for the VPD registry must be submitted using the Commission's web form system does not subject VPDs, including small entities, to additional reporting and recordkeeping requirements, because VPDs are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their reporting and recordkeeping associated with such submissions in order to comply with the rule. The Commission considers the cost for VPDs to transition to a mandatory web form method of filing to be minimal as compared with the ease and accuracy of filing and the benefits to the public derived from a mandatory web form system.

81. The requirement for video programmers to register and file contact information with the Commission imposes new reporting and recordkeeping obligations on video programmers, including small entities. However, the new requirement takes into consideration the impact on small entities. The filing of contact information is a simple task that should take no more than a few minutes. In addition, such requirements may benefit other entities, such as VPDs, including small entities, and consumers, who will be able to search the registration information for contact information.

82. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Congressional Review Act

83. The Commission sent a copy of document FCC 16–17 in a report to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301(r) and 613, document FCC 16–17 is ADOPTED and the Commission's rules are AMENDED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 16–17, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 554a, 613, 617.

■ 2. Amend § 79.1 as follows:
■ a. Redesignate paragraph (a)(12) as paragraph (a)(13);
■ b. Add a new paragraph (a)(12);
■ c. Revise paragraphs (b), (c)(1), (e)(5), (e)(6), (e)(9), (g), and (i);
■ d. Remove and reserve paragraph (j)(1);
■ e. Revise paragraph (j)(3) introductory text;
■ f. Remove paragraph (j)(4);
■ g. Revise paragraph (k)(1)(iv);
■ h. Add and reserve paragraph (l); and
■ i. Add paragraph (m).

The additions and revisions read as follows:

§ 79.1 Closed captioning of televised video programming.

(a) * * *

(12) *Video programming owner.* Any person or entity that either:

(i) Licenses video programming to a video programming distributor or provider that is intended for distribution to residential households; or

(ii) Acts as the video programming distributor or provider and also possesses the right to license linear video programming to a video programming distributor or provider that is intended for distribution to residential households.

* * * * *

(b) *Requirements for closed captioning of video programming*—(1) *Requirements for new programming.* (i) Video programming distributors must ensure that 100% of new, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned.

(ii) Video programmers must provide closed captioning for 100% of new, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter.

(2) *Requirements for pre-rule programming.* (i) Video programming distributors must ensure that 75% of pre-rule, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned.

(ii) Video programmers must provide closed captioning for 75% of pre-rule, nonexempt English language and Spanish video programming that is being distributed and exhibited on each channel during each calendar quarter.

(3) Video programming distributors shall continue to provide captioned video programming at substantially the same level as the average level of captioning that they provided during the first six (6) months of 1997 even if that amount of captioning exceeds the requirements otherwise set forth in this section.

(c) * * *

(1) All video programming distributors shall deliver all programming received from the video programmer containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.

* * * * *

(e) * * *

(5) Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except that video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards compliance with the requirements for pre-rule programming.

(6) For purposes of paragraph (d)(11) of this section, captioning expenses include direct expenditures for captioning as well as allowable costs specifically allocated by a video programmer through the price of the video programming to that video programming provider. To be an allowable allocated cost, a video programmer may not allocate more than 100 percent of the costs of captioning to individual video programming providers. A video programmer may allocate the captioning costs only once and may use any commercially reasonable allocation method.

* * * * *

(9) Video programming distributors shall not be required to ensure the provision of closed captioning for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed pursuant to sections 614 and 615 of the Communications Act or pursuant to the compulsory copyright licensing provisions of sections 111 and 119 of the Copyright Act (Title 17 U.S.C. 111 and 119); programming involving candidates for public office covered by sections 315 and 312 of the Communications Act and associated policies; commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the Communications Act; video programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement pursuant to section 335(b)(3) of the Communications Act to the extent such video programming is exempt from the editorial control of the video programming provider; and video programming distributed by a common carrier or that is distributed on an open video system pursuant to section 653 of the Communications Act by an entity other than the open video system operator. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

* * * * *

(g) *Complaint procedures*—(1) *Filing closed captioning complaints.* Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days after the problem with captioning.

(2) *Complaints filed with the Commission.* A complaint filed with the Commission must be in writing, must state with specificity the alleged Commission rule violated, and must include:

(i) The consumer's name, postal address, and other contact information, if available, such as telephone number or email address, along with the consumer's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the consumer.

(ii) The channel number; channel name, network, or call sign; the name of the multichannel video program distributor, if applicable; the date and time when the captioning problem occurred; the name of the program with the captioning problem; and a detailed description of the captioning problem, including specific information about the frequency and type of problem.

(3) *Process for forwarding complaints.* The Commission will forward complaints filed first with the Commission to the appropriate video programming distributor and video programmer. If the Commission cannot determine the appropriate video programmer, the Commission will forward the complaint to the video programming distributor and notify the video programming distributor of the Commission's inability to determine the appropriate video programmer. The video programming distributor must respond in writing to the Commission with the name and contact information for the appropriate video programmer within ten (10) days after the date of such notification. The Commission will then forward the complaint to the appropriate video programmer.

(4) *Video programming distributor and video programmer responsibilities with respect to complaints forwarded by the Commission.* (i) In response to a complaint, the video programming distributor must conduct an investigation to identify the source of the captioning problem and resolve all aspects of the captioning problem that are within its control. At a minimum, a video programming distributor must perform the following actions as part of its investigation:

(A) *Program stream check.* The video programming distributor must capture program streams, defined as digitally encoded elementary streams such as video, audio, closed captioning, timing, and other data necessary for a viewer to receive a complete television viewing experience, of the programming network identified in the complaint and check the program streams for any caption-related impairments;

(B) *Processing equipment check.* If the video programming distributor's investigation indicates a problem with the program stream, and there is not prior knowledge as to where the problem originated, the video programming distributor must check post-processing equipment at the relevant headend or other video distribution facility to see if the issue was introduced by the video programming distributor or was present in the program stream when received by the video programming distributor from the video programmer; and

(C) *Consumer premises check.* If the video programming distributor's investigation indicates that the problem may lie with the consumer's customer premises equipment, including the set-top box, the video programming distributor must check the end user equipment, either remotely or, if necessary, at the consumer's premises, to ensure there are no issues that might interfere with the pass through, rendering, or display of closed captioning.

(ii) After conducting its investigation, the video programming distributor shall provide a response to the complaint in writing to the Commission, the appropriate video programmer, and the complainant within thirty (30) days after the date the Commission forwarded the complaint. The video programming distributor's response must:

(A) Acknowledge responsibility for the closed captioning problem and describe the steps taken to resolve the problem; or

(B) Certify that the video programming distributor has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(i) of this section and that the closed captioning problem is not within the video programming distributor's control and appears to have been present in the program steam when received by the video programming distributor; or

(C) Certify that the video programming distributor has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(i) of this section and that the closed captioning problem appears to have been caused by a third party DVR, television, or other third party device not within the video programming distributor's control.

(iii) If the video programming distributor provides a certification in accordance with paragraph (g)(4)(ii)(B) of this section, the video programmer to whom the complaint was referred must conduct an investigation to identify the source of the captioning problem and resolve all aspects of the captioning problem that are within its control.

(A) The video programmer may call upon the video programming distributor for assistance as needed, and the video programming distributor must provide assistance to the video programmer in resolving the complaint, as needed.

(B) After conducting its investigation, the video programmer must provide a response to the complaint in writing to the Commission, the appropriate video programming distributor, and the complainant within thirty (30) days after the date of the video programming distributor's certification. Such response either must describe the steps taken by the video programmer to correct the captioning problem or certify that the video programmer has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(iii) of this section and that the captioning problem was not within its control, for example, because the program stream was not subject to the closed captioning problem at the time the program stream was handed off to the video programming distributor.

(C) If the video programmer certifies pursuant paragraph (g)(4)(iii)(B) of this section that the captioning problem was not within its control, and it has not been determined by either the video programmer or the video programming distributor that the problem was caused by a third party device or other causes that appear not to be within the control of either the video programming distributor or the video programmer, the video programming distributor and video programmer shall work together to determine the source of the captioning problem. Once the source of the captioning problem is determined, the video programming distributor and video programmer shall each correct those aspects of the captioning problem that are within its respective control. Within thirty (30) days after the date of the video programmer's certification provided pursuant to paragraph (g)(4)(iii)(B) of this section, the video programming distributor, after consulting with the video programmer, shall report in writing to the Commission and the complainant on the steps taken to correct the captioning problem.

(5) *Complaints filed with video programming distributors.* (i) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant with thirty (30) days after the date of the complaint. The video programming distributor's response must either:

(A) Acknowledge responsibility for the closed captioning problem and describe to the complainant the steps taken to resolve the problem; or

(B) Inform the complainant that it has referred the complaint to the appropriate video programmer or other responsible entity and provide the name and contact information of the video programmer or other responsible entity and the unique complaint identification number assigned to the complaint pursuant to paragraph (g)(5)(ii)(B) of this section; or

(C) Inform the complainant that the closed captioning problem appears to have been caused by a third party DVR, television, or other third party device not within the video programming distributor's control.

(ii) If the video programming distributor determines that the issue raised in the complaint was not within the video programming distributor's control and was not caused by a third party device, the video programming distributor must forward the complaint and the results of its investigation of the complaint to the appropriate video programmer or other responsible entity within thirty (30) days after the date of the complaint.

(A) The video programming distributor must either forward the complaint with the complainant's name, contact information and other identifying information redacted or provide the video programmer or other responsible entity with sufficient information contained in the complaint to achieve the complaint's investigation and resolution.

(B) The video programming distributor must assign a unique complaint identification number to the complaint and transmit that number to the video programmer with the complaint.

(iii) If a video programming distributor forwards a complaint to a video programmer or other responsible entity pursuant to paragraph (g)(5)(ii) of this section, the video programmer or other responsible entity must respond to the video programming distributor in writing in a form that can be forwarded to the complainant within thirty (30) days after the forwarding date of the complaint.

(A) The video programming distributor must forward the video programmer's or other responsible entity's response to the complainant within ten (10) days after the date of the response.

(B) If the video programmer or other responsible entity does not respond to the video programming distributor within thirty (30) days after the forwarding date of the complaint, the video programming distributor must inform the complainant of the video programmer's or other responsible entity's failure to respond within forty (40) days after the forwarding date of the complaint.

(iv) If a video programming distributor fails to respond to the complainant as required by paragraphs (g)(5)(i) of this section, or if the response received by the complainant does not satisfy the complainant, the complainant may file the complaint with the Commission within sixty (60) days after the time allotted for the video programming distributor to respond to the complainant. The Commission will forward such complaint to the video programming distributor and video programmer, and the video programming distributor and video programmer shall address such complaint as specified in paragraph (g)(4) of this section.

(v) If a video programmer or other responsible entity fails to respond to the video programming distributor as required by paragraph (g)(5)(iii) of this section, or if a video programming distributor fails to respond to the complainant as required by paragraph (g)(5)(iii)(A) or (B) of this section, or if the response from the video programmer or other responsible entity forwarded by the video programming distributor to the complainant does not satisfy the complainant, the complainant may file the complaint with the Commission within sixty (60) days after the time allotted for the video programming distributor to respond to the complainant pursuant to paragraph (g)(5)(iii)(A) or (B) of this section. The Commission will forward such complaints to the appropriate video programming distributor and video programmer, and the video programming distributor and video programmer shall handle such complaints as specified in paragraph (g)(4) of this section.

(6) *Provision of documents and records.* In response to a complaint, a video programming distributor or video programmer is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

(7) *Reliance on certifications.* Video programming distributors may rely on certifications from video programmers made in accordance with paragraph (m) of this section to demonstrate compliance with paragraphs (b)(1)(i) and (b)(2)(i) of this section. Video programming distributors shall not be held responsible for situations where a video programmer falsely certifies under paragraph (m) of this section unless the video programming distributor knows or should have known that the certification is false.

(8) *Commission review of complaints.* The Commission will review complaints filed with the Commission, including all supporting evidence, and determine whether a violation has occurred. The Commission will, as needed, request additional information from the video programming distributor or video programmer.

(9) *Compliance*—(i) *Initial response to a pattern or trend of noncompliance.* If the Commission notifies a video programming distributor or video programmer of a pattern or trend of possible noncompliance with the Commission's rules for the quality of closed captioning by the video programming distributor or video programmer, the video programming distributor or video programmer shall respond to the Commission within thirty (30) days after the Commission's notice of such possible noncompliance, describing corrective measures taken, including those measures the video programming distributor or video programmer may have undertaken in response to informal complaints and inquiries from viewers.

(ii) *Corrective action plan.* If, after the date for a video programming distributor or video programmer to respond to a notification under paragraph (g)(8)(i) of this section, the Commission subsequently notifies the video programming distributor or video programmer that there is further evidence indicating a pattern or trend of noncompliance with the Commission's rules for quality of closed captioning, the video programming distributor or video programmer shall submit to the Commission, within thirty (30) days after the date of such subsequent notification, a written action plan describing specific measures it will take to bring the video programming distributor's or video programmer's closed captioning performance into compliance with the Commission's closed captioning quality rules. In addition, the video programming distributor or video programmer shall conduct spot checks of its closed captioning quality performance and report to the Commission on the results of such action plan and spot checks 180 days after the submission of such action plan.

(iii) *Continued evidence of a pattern or trend of noncompliance.* If, after the date for submission of a report on the results of an action plan and spot checks pursuant to paragraph (g)(8)(ii) of this section, the Commission finds continued evidence of a pattern or trend of noncompliance, additional enforcement actions may be taken, which may include admonishments, forfeitures, and other corrective actions.

(iv) *Enforcement action.* The Commission may take enforcement action, which may include admonishments, forfeitures, and other corrective actions, without providing a video programming distributor or video programmer the opportunity for an initial response to a pattern or trend of noncompliance or a corrective action plan, or both, under paragraphs (g)(8)(i) and (ii) of this section, for a systemic closed captioning quality problem or an intentional and deliberate violation of the Commission's rules for the quality of closed captioning.

* * * * *

(i) *Contact information.* (1) *Receipt and handling of immediate concerns.* Video programming distributors shall make publicly available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Video programming distributors must designate a telephone number, fax number (if the video programming distributor has a fax number), and email address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Video programming distributors shall keep this information current and update it to reflect any changes within ten (10) business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories. Video programming distributors shall ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a video programming distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the video programming distributor, the staff person receiving the inquiry shall refer the matter appropriately for resolution.

(2) *Complaints.* Video programming distributors shall make contact information publicly available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with

primary responsibility for captioning issues and who can ensure compliance with the Commission's rules. In addition, this contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor has a fax number), postal mailing address, and email address. Video programming distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Video programming distributors shall keep this information current and update it within ten (10) business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) *Providing contact information to the Commission.* Video programming distributors and video programmers shall file contact information with the Commission through a web form located on the Commission's Web site. Such contact information shall include the name of a person with primary responsibility for captioning issues and ensuring compliance with the Commission's rules. In addition, such contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor or video programmer has a fax number), postal mailing address, and email address. Contact information shall be available to consumers on the Commission's Web site or by telephone inquiry to the Commission's Consumer Center. Video programming distributors and video programmers shall notify the Commission each time there is a change in any of this required information within ten (10) business days.

(j) * * *

(1) [Reserved]

* * * * *

(3) *Application of captioning quality standards.* Video Programmers shall ensure that captioning meet the standards of paragraph (j)(2) of this section for accuracy, synchronicity, completeness and placement, except for *de minimis* captioning errors. In determining whether a captioning error is *de minimis*, the Commission will consider the particular circumstances presented, including the type of failure, the reason for the failure, whether the failure was one-time or continuing, the degree to which the program was understandable despite the errors, and the time frame within which corrective action was taken to prevent such failures from recurring. When applying such standards to live and near-live programming, the Commission will also take into account, on a case-by-case basis, the following factors:

* * * * *

(k) * * *

(1) * * *

(iv) *Certification procedures for video programmers.* Video programmers adopting Best Practices will certify to the Commission that they adhere to Best Practices for video programmers, in accordance with paragraph (m) of this section.

* * * * *

(l) [Reserved]

(m) *Video programmer certification.* (1) On or before July 1, 2017, or prior to the first time a video programmer that has not previously provided video programming shown on television provides video programming for television for the first time, whichever is later, and on or before July 1 of each year thereafter, each video programmer shall submit a certification to the Commission through a web form located on the Commission's Web site stating that:

(i) The video programmer provides closed captioning for its programs in compliance with the Commission's rules; and

(ii) The video programmers' programs either satisfy the caption quality standards of paragraph (j)(2) of this section; or in the ordinary course of business, the video programmer has adopted and follows the Best Practices set forth in paragraph (k)(1) of this section.

(2) If all of video programmer's programs are exempt from the closed captioning rules under one or more of the exemptions set forth in this section, in lieu of the certification required by paragraph (m)(1) of this section, the video programmer shall submit a certification to the Commission through a web form located on the Commission's Web site stating that all of its programs are exempt from the closed captioning rules and specify each category of exemption claimed by the video programmer.

(3) If some of a video programmer's programs are exempt from the closed captioning rules under one or more of the exemptions set forth in this section, as part of the certification required by paragraph (m)(1) of this section, the video programmer shall include a certification stating that some of its programs are exempt from the closed captioning rules and specify each category of exemption claimed by the video programmer.

(4) A television broadcast station licensed pursuant to part 73 of this chapter or a low power television broadcast station licensed pursuant to part 74, subpart G, of this chapter, or the owner of either such station, is not required to provide a certification for video programming that is broadcast by the television broadcast station.

[FR Doc. 2016–19685 Filed 8–22–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160617540–6702–02]

RIN 0648–XE695

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the West Coast for the fishing season of July 1, 2016, through June 30, 2017. This rule is implemented according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2016–2017 HG for Pacific mackerel is 21,161 metric tons (mt). This is the total commercial fishing target level. NMFS is also implementing an annual catch target (ACT), of 20,161 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,161 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective September 22, 2016 through June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034, *Joshua.Lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS

Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG, and ACT recommendations, and comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. Under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual Specifications published in the **Federal Register** establish the allowable harvest levels (*i.e.* OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this action is to implement the 2016–2017 ACL, HG, ACT and other annual catch reference points, including an OFL and an ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel age one and above. For the 2016–2017 management season this is 118,968 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.

4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted a new full stock assessment for Pacific mackerel completed by NMFS Southwest Fisheries Science Center and along with the Council's SSC, approved the resulting Pacific mackerel biomass estimate of 118,968 mt as the best available science for use in the 2016–2017 fishing year. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is implementing, an OFL of 24,983 mt, an ABC and ACL of 22,822 mt, an HG of 21,161 mt, and an ACT of 20,161 mt for the fishing year of July 1, 2016, to June 30, 2017.

Upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries. For the remainder of the fishing year incidental landings would also be constrained to a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,161 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2016–2017 season; therefore, the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside and the allowance of an incidental fishery are to allow for restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure, NMFS would also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On June 23, 2016, a proposed rule was published for this action and public comments solicited (81 FR 40844, as corrected by 81 FR 47154), with a comment period that ended on July 25, 2016. NMFS received no comments regarding the proposed Pacific mackerel specifications and no changes were made from the proposed rule. Detailed information on the fishery and the stock assessment are found in the report "Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 Fishing Year" (see **FOR FURTHER INFORMATION CONTACT**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

These specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–20056 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE827

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear and catcher vessels greater than or equal to 60 feet (18.3 meters) length overall (LOA) using hook-and-line gear to catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2016 total allowable catch of Pacific cod to be harvested.

DATES: Effective August 22, 2016 through 2400 hours, Alaska local time (A.l.t.), December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,394 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and one inseason adjustment (81 FR 5627, February 3, 2016).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,000 mt of the remaining 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 1,000 mt of Pacific cod to the annual amount specified for catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

The 2016 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear in the BSAI is 448 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016). The Regional Administrator has determined that catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear will not be able to harvest 448 mt of the remaining 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*3*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 448 mt of Pacific cod to catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2016 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and inseason adjustment (81 FR 5627, February 3, 2016) are revised as follows: 394 mt for vessels using jig gear, 0 mt for catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear, and 7,674 mt to catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from other sectors to catcher vessels less than 60 feet LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–20105 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE828

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2016 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2016, through 2400 hours, A.l.t., December 31, 2016. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 6, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0118, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/*

#!docketDetail;D=NOAA-NMFS-2015-0118, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on February 5, 2016 (81 FR 7037, February 10, 2016).

NMFS has determined that as of August 17, 2016, approximately 1,511 metric tons of Pacific cod remain in the 2016 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2016 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 6, 2016.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–20106 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 163
Tuesday, August 23, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–16–0050; SC16–922–1 PR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2016–17 and subsequent fiscal periods from $0.75 to $1.40 per ton of Washington apricots handled under the marketing order. The Committee, which is composed of growers and handlers, locally administers the order which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 22, 2016.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *DaleJ.Novotny@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Washington apricots beginning April 1, 2016, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2016–17 and subsequent fiscal periods from $0.75 to $1.40 per ton of Washington apricots handled under the order.

The Washington apricots marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs, and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2015–16 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 11, 2016, and unanimously recommended 2016–17 expenditures of $7,160 and an assessment rate of $1.40 per ton of apricots. In comparison, the previous fiscal period's budgeted expenditures were $7,610. The recommended assessment rate of $1.40 per ton is $0.65

per ton higher than the rate currently in effect.

Last year at the May 12, 2015, meeting, Committee members voted to moderately increase the budget from $7,095 to $7,610, and to decrease the assessment rate from $1.50 to $0.75 per ton of apricots handled. The Committee was attempting to lower their excess reserve funds to approximately one fiscal period's operating expenses to remain in compliance with § 922.42(a)(2) of the order. The Committee based its recommendation on a crop estimate of 5,800 tons for the 2015–16 crop year. The actual crop yield for that period was 4,795 tons, 1,005 tons less than the 5,800 ton estimate used by the Committee for budgeting purposes. Low water supply and higher than average temperatures were reported by the industry at the May 11, 2016, meeting as the major factors for the short 2015–16 crop. As a result of the reduced crop size and related lower assessment revenue, the Committee was forced to use more funds from its reserve than previously anticipated. The Committee intends to fully fund ongoing operations and maintain adequate reserve funds through the implementation of the proposed assessment rate increase for the 2016–17 and future fiscal periods.

The major expenditures recommended by the Committee for the 2016–17 fiscal period include $3,000 for the contracted management fee to the Washington State Fruit Commission, $1,200 for Committee travel, $2,000 for the annual audit, $500 for computer and technical services, and $250 for office supplies. Budgeted expenses for these items in the 2015–2016 fiscal period were $3,000 for the management fee, $1,200 for Committee travel, $2,500 for the annual audit, and $500 for office supplies, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. Washington apricot shipments for the year are estimated at 5,000 tons which should provide $7,000 in assessment income at the proposed rate of $1.40 per ton of Washington apricots handled. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for the 2016–17 fiscal period. Funds in the reserve (currently $7,301) would be kept within the maximum amount permitted by the order of approximately one fiscal period's operational expenses. Authority for maintaining a financial reserve is found in § 922.42(a)(2) of the order. The Committee expects its monetary reserve to decrease from $7,301 at the beginning of the 2016–17 fiscal period to approximately $7,141 at the end of the 2016–17 fiscal period. That amount would be within the provisions of the order and would provide the Committee with the ability to absorb fluctuations in assessment income and expenses into the future.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee meetings are available from the Committee or the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2016–17 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 growers and 17 handlers of Washington apricots subject to regulation under the marketing order in the regulated area. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reports that the 2015 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 8,000 tons, the average price was $1,050 per ton, and the total farm-gate value was approximately $8,400,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2015 gross-average producer revenue from the sale of apricots was approximately $84,000.

There are approximately 17 handlers under the order. According to information from the Committee, handlers shipped 4,795 tons of apricots during the 2015–16 fiscal period (approximately 400,000 24-pound containers), for an average of 282 tons (or 23,500 24-pound containers) of apricots shipped per handler.

In addition, based on information from the USDA's Market News Service, 2015 freight-on-board prices for Washington No.1 apricots ranged from $20.00 to $26.00 per 24-pound container, with an average f.o.b price of $23.00 per container, for both loose-pack and 2-layer tray-pack containers. As such, the total value of apricots handled most likely ranged between $8,000,000 and $10,400,000, with most of the 17 handlers in the production area handling less than $1,000,000. Average handler revenue from the sale of apricots in 2015 is estimated at approximately $541,176. Using this information, it is determined that each of the Washington apricot handlers currently ship less than $7,500,000 worth of apricots on an annual basis. In view of the foregoing, it is concluded that the majority of handlers and growers of Washington apricots may be classified as small entities.

This proposal would increase the assessment rate established for the Committee, and collected from handlers, for the 2016–17 and subsequent fiscal periods from $0.75 to $1.40 per ton of Washington apricots handled. The proposed assessment rate of $1.40 is $0.65 higher than the 2015–16 rate. The quantity of assessable apricots for the 2016–17 fiscal period is estimated at 5,000 tons. Thus, the $1.40 rate should provide $7,000 in assessment income and, combined with the existing reserve fund, should be adequate to meet this year's budgeted expenses.

The major expenditures recommended by the Committee for the

2016–17 fiscal period include $3,000 for the contracted management fee to the Washington State Fruit Commission, $1,200 for Committee travel, $2,000 for the annual audit, $500 for computer and technical services, and $250 for office supplies. Budgeted expenses for these items in the 2015–2016 fiscal period were $3,000 for the management fee, $1,200 for Committee travel, $2,500 for the annual audit, and $500 for office supplies.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the order.

A review of historical data and preliminary information pertaining to the upcoming 2016–17 fiscal period season indicates that the grower price for Washington apricots could range between $1,050 and $1,300 per ton. Therefore, the assessment revenue for the 2016–17 fiscal period, as a percentage of total grower revenue, could range between 0.133 and 0.108 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 11, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2016–17 fiscal period began on April 1, 2016, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are already shipping Washington apricots from the 2016 crop; and (4) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2016, an assessment rate of $1.40 per ton is established for Washington apricots handled in the production area.

Dated: August 18, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–20096 Filed 8–22–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LPS–15–0084]

Amendment to the Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to add six Harmonized Tariff System (HTS) codes for imported veal and veal products and update assessment levels for imported veal and veal products based on revised determinations of live animal equivalencies.

DATES: Comments must be received by October 24, 2016.

ADDRESSES: Comments should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–LPS–15–0084; the date of submission; and the page number of this issue of the **Federal Register**. Comments may also be sent to Mike Dinkel, Agricultural Marketing Specialist, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA, Room 2610–S, STOP 0249, 1400 Independence Avenue SW., Washington, DC 20250–0249; or via fax (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at *www.regulations.gov.* Comments must be received by October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Mike Dinkel, Agricultural Marketing Specialist, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA, Room 2610–S, STOP 0249, 1400 Independence Avenue SW., Washington, DC 20250–0249; fax (202) 720–1125; telephone (301) 352–

7497; or email *Michael.Dinkel@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The effect of the Order upon small entities was discussed in the July 18, 1986, **Federal Register** [51 FR 26132]. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Based on conversations with importing companies, there are approximately 270 importers who import beef and beef products and veal and veal products into the U.S. and about 198 importers who import live cattle into the U.S. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of $7.5 million or less.

The proposed rule will impose no significant burden on the industry. It will merely add six HTS codes for imported veal and veal products and update assessment levels for imported veal and veal products based on revised determinations of live animal equivalencies. The addition of HTS codes reflects an increase of imported veal and veal product into the U.S. Accordingly, the Administrator of AMS has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB under OMB control number 0581–0093.

Background

The Act authorized the establishment of a national beef promotion and research program. The final Order was published in the **Federal Register** on July 18, 1986 (51 FR 21632), and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board), appointed by the Secretary of Agriculture (Secretary) from industry nominations, and composed of 100 cattle producers and importers. The program is funded by a $1-per-head assessment on producers selling cattle in the U.S. as well as an equivalent assessment on importers of cattle, beef, and beef products.

Importers pay assessments on imported cattle, beef, and beef products. U.S. Customs and Border Protection collects and remits the assessment to the Board. The term "importer" is defined as "any person who imports cattle, beef, or beef products from outside the United States." Imported beef or beef products is defined as "products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products, which have been assigned one or more of the following numbers in the Tariff Schedule of the United States."

On March 16, 2016, AMS published a proposed rule in the **Federal Register** (81 FR 14022) amending § 1260.172 of the Order to add six HTS codes for imported veal and veal products. On May 6, 2016, AMS announced in a Notice to the Trade that it was withdrawing the proposed rule because an error was discovered in the imported veal carcass weight. AMS also announced at that time that it intended to publish another proposed rule with the correct carcass weight and to include the formula and an explanation of how the calculations for the new assessment rates are calculated. On June 30, 2016, AMS published the withdrawal Notice in the **Federal Register** (81 FR 42576). This proposed rule replaces the March 16, 2016, version. In § 1260.172 of the Order, the table would be revised to include the new codes and assessment rates for imported veal and veal products.

The Act requires that assessments on imported beef and beef products and veal and veal products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents.

Prior to publishing the March 16, 2016, proposed rule, USDA received information from the Board regarding imported veal assessments. The Board requested expanding the number of HTS codes for imported veal and veal products in order to capture product that is not currently being assessed and to update the live animal equivalency rate on imported veal to reflect the same assessment as domestic veal and veal products. The Board also suggested that AMS update the dressed veal weight to better reflect current dressed veal weights. The Board recommended using an average dressed veal weight from 2010 to the most current data. The Board stated that establishing an average over this period of time takes into account short-term highs and lows due to the cattle cycle, weather effects, and feed prices. This average would be 154 pounds.

In order to convert carcasses and cuts back to a live animal equivalency, conversion factors are used. The conversion factor takes into account what is lost (feet, head, tail, hide, internal organs, and bone for boneless product) as the veal is processed into carcasses, bone-in cuts, and boneless cuts.

For bone-in carcasses and cuts, a one-to-one ratio is used to convert product weight to a live animal equivalent. For these items, a conversion factor of 1.00 is used.

For boneless veal cuts, the conversion factor "adds back" the weight of the bones removed from the product. For boneless veal cuts, a conversion factor of 1.32 is used.

To determine the conversion factor of boneless veal cuts to carcass weight equivalents, AMS used the latest boneless veal factor for pounds (0.685) from Table 7 of the Economic Research Service Agricultural Handbook Number 697, *Weights, Measures, and Conversion Factors for Agricultural Commodities and Their Products* (June 1992), subtracted this factor from "1," and added "1" to the result, as follows:

$(1 - 0.685) + 1 = 1.315$ (rounded to 1.32)

The assessment per kilograms is determined by dividing the conversion factor by the carcass weight and multiplying it by the pounds-to-kilograms factor of 2.2046.

Calculations:

- Carcass and Bone-in Cuts

$$\frac{1.00}{154}(2.2046) = .01431558$$

- Boneless Cuts

$$\frac{1.32}{154}(2.2046) = .01889657$$

These rates appear as assessment rates in the HTS code tables in § 1260.172.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, AMS proposes to amend 7 CFR part 1260 as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Amend § 1260.172 by revising paragraph (b) (2) to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, beef products, veal, and veal products are as follows:

IMPORTED BEEF AND BEEF PRODUCTS

[Veal]

HTS No.	Item description	Assessment rate per kg
0201.10.0510	Veal carcasses and half carcasses	.01431558
0201.10.1010	Misc. Veal	.01431558
0201.10.5010	Misc. Veal	.01431558
0202.10.0510	Veal carcasses and half carcasses	.01431558
0202.10.1010	Veal carcasses and half carcasses	.01431558
0202.10.5010	Veal carcasses and half carcasses	.01431558

IMPORTED BEEF AND BEEF PRODUCTS

[Veal]

HTS No.	Item description	Assessment rate per kg
0201.20.5010	Fresh or chilled bone in veal cuts	.01431558
0201.20.5020	Other	.01431558
0201.30.5010	Fresh or chilled boneless veal cuts	.01889657
0201.30.5020	Other	.01889657
0202.30.5010	Frozen boneless veal cuts	.01889657
0202.30.5020	Other	.01889657

* * * * *

Dated: August 18, 2016

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–20098 Filed 8–22–16; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0103]

RIN 3150–AJ75

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the "List of Approved Spent Fuel Storage Casks" to add Amendment No. 2 to the Certificate of Compliance (CoC) No. 1032 for the Holtec International (Holtec) HI–STORM Flood/Wind (FW) Multipurpose Canister (MPC) Storage. Amendment No. 2 adds new fuel types to the HI–STORM FW MPC Storage System, includes new criticality calculations, updates an existing fuel type description, and includes changes previously incorporated in Amendment No. 0 to CoC No. 1032, Revision 1, and revises CoC Condition No. 8 to provide additional clarity and guidance.

DATES: Submit comments by September 22, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342 or email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0103 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0103.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0103 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 2 to CoC

No. 1032 and does not include other aspects of the Holtec HI–STORM FW MPC Storage System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on November 7, 2016. However, if the NRC receives significant adverse comments on this proposed rule by September 22, 2016, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that "the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule dated March 28, 2011 (76 FR 17019), that approved the Holtec HI–STORM FW MPC Storage System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, "List of approved spent fuel storage casks," as CoC No. 1032.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
Letter and License Application	ML15092A130
Supplement Letter	ML15114A423
Package with the Transmittal and Request for Supplemental Information Responses Supporting HI–STORM FW CoC No. 1032, Amendment No. 2.	ML15170A433
Supplement to HI–STORM FW CoC No. 1032, Amendment 2	ML15233A038
Proposed CoC No. 1032, Amendment No. 2	ML16054A625
Proposed CoC No. 1032, Amendment No. 2 —Appendix A	ML16054A628
Proposed CoC No. 1032, Amendment No. 2—Technical Specifications, Appendix B	ML16054A627
CoC No. 1032, Amendment No. 2—Preliminary Safety Evaluation Report	ML16054A624

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0103. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0103); (2) click the "Sign up for Email Alerts" link; and 3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

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Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011, superseded by Amendment Number 0, Revision 1, on April 25, 2016.

Amendment Number 0, Revision 1, Effective Date: April 25, 2016.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

Amendment Number 1, Revision 1, Effective Date: June 2, 2015.

Amendment Number 2, Effective Date: November 7, 2016.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 2016.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2016–20091 Filed 8–22–16; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1272

RIN 2590–AA84

Federal Home Loan Bank New Business Activities

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The proposed rule would modify a part of the Federal Housing Finance Agency (FHFA) regulations, which addresses requirements for the Federal Home Loan Banks' (Banks) new business activities (NBAs). The proposed rule would reduce the scope of NBAs for which the Banks must seek approval from FHFA and would establish new timelines for agency review and approval of NBA notices. The proposed rule also would reorganize a part of our regulations to clarify the protocol for FHFA review of NBAs.

DATES: FHFA must receive written comments on or before October 24, 2016.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA84 by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comments to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include "RIN 2590–AA84" in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA84, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA84, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Lara Worley, Principal Financial Analyst, *Lara.Worley@FHFA.gov,* 202–649–3324, Division of Federal Home Loan Bank Regulation; or Winston Sale, Assistant General Counsel, *Winston.Sale@FHFA.gov,* 202–649–3081 (these are not toll-free numbers), Office of General Counsel (OGC), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comment on all aspects of the proposed rulemaking, which FHFA is publishing with a 60-day comment period. After considering the comments, FHFA will develop a final regulation.

Copies of all comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information you provide, such as your name, address, email address, and telephone number. Copies of the comments also will be available for public inspection and copying on government-business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Constitution Center, 400 7th Street SW., Washington, DC 20219. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

II. Background

FHFA is an independent agency of the federal government established to regulate and oversee the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (together, the Enterprises), the Banks (collectively with the Enterprises, the regulated entities), and the Bank System's Office of Finance.[1] FHFA is the primary federal financial regulator of each regulated entity. FHFA's regulatory mission is to ensure, among other things, that each of the regulated entities "operates in a safe and sound manner" and that its "operations and activities . . . foster liquid, efficient, competitive and resilient national housing finance markets." [2]

The eleven Banks are organized under the Federal Home Loan Bank Act (Bank Act) as cooperatives,[3] meaning that only members may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.[4] Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions.[5]

In 2000, the Federal Housing Finance Board (Finance Board), a predecessor to FHFA, adopted a rule (Modernization Rule) implementing certain statutory amendments made by the Federal Home Loan Bank System Modernization Act of 1999.[6] Because the statutory amendments had expanded the types of collateral that the Banks may accept, the Finance Board established a prior review process through which the Finance Board could assess the risks to the Banks of accepting the new types of collateral. That process was codified in the NBA regulation at 12 CFR part 980, which also required the Banks to obtain Finance Board approval prior to undertaking any other NBAs that presented risks the Banks had not previously managed.[7] In 2010, FHFA re-designated part 980 as part 1272 of its regulations.[8] Aside from that re-designation, the NBA regulation has remained unchanged since 2000.

In April 2013, FHFA published a Notice of Regulatory Review (Review Notice) pursuant to its regulatory review plan published in 2012.[9] The Review Notice requested the public's comment on FHFA's existing regulations for purposes of improving their effectiveness and reducing their burden.[10] In response to the Review Notice, FHFA received a letter co-signed by all of the Banks (Request Letter) with comments on certain regulations, including part 1272.[11] The Request Letter's comments on part 1272 focused on two issues: (1) The scope of the NBA rule; and (2) The length of time afforded to FHFA under the rule to respond to an NBA notice.

Specifically, the Request Letter expressed concern that the broad scope of the rule requires the Banks to expend significant time and effort to determine whether a proposed activity is subject to the rule's purview. Further, the Banks expressed concern that the rule requires them to analyze the risks associated with a contemplated NBA to their member institutions, as well to the Banks themselves. The Banks noted that, if applied literally, that provision requires them to:

> evaluate whether risks from certain business activities are regularly managed by hundreds of member banks, credit unions and insurance companies of widely different sizes and locations, which have many different business and operational models and strategies.[12]

The Request Letter also noted that "the addition of a materiality concept would greatly enhance the FHLBanks' ability to assess the regulations' applicability." With respect to the time frame for FHFA's response to NBA notices, the Banks expressed concern that the current regulation allows the review period to be extended indefinitely and that FHFA should revise the regulation to require more prompt decisions on NBA submissions. FHFA is now proposing to amend part 1272 to address the Banks' concerns.

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[1] 12 U.S.C. 4511.

[2] 12 U.S.C. 4513(a)(1)(B).

[3] *See* 12 U.S.C. 1423 and 1432(a).

[4] *See* 12 U.S.C. 1426(a)(4), 1430(a), and 1430b.

[5] *See* 12 U.S.C. 1427.

[6] *See* 65 FR 44414 (July 18, 2000). The Federal Home Loan Bank System Modernization Act of 1999 is Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[7] *See* 65 FR 44420 (July 18, 2000).

[8] *See* 75 FR 76622 (Dec. 9, 2010).

[9] *See* 78 FR 23507 (April 19, 2013). *See also* Regulatory Review Plan, 77 FR 10351 (Feb. 22, 2012).

[10] 78 FR 23508 (April 19, 2013).

[11] The Request Letter is available on FHFA's Web site, at the following link: *https://www.fhfa.gov//SupervisionRegulation/Rules/Pages/Comment-Detail.aspx?CommentId=4012.*

[12] *Id* at 2–3.

III. Consideration of Differences Between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Director of FHFA (Director) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.[13] The changes proposed in this rulemaking apply exclusively to the Banks and generally affect the scope and timing of their NBA notifications. Apart from those changes, the substance of the proposed rule is substantially similar to that of the existing NBA regulation. In preparing this proposed rule the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors, and requests comments about any particular differences that the Director should consider when developing a final rule.

IV. Analysis of the Proposed Rule

The Proposed Rule. The purposes of the proposed rule are to revise the scope of activities requiring submission of an NBA notice, specify the response time to an NBA notice, and reorganize and clarify the rule. Additional changes are clarifying or conforming in nature. The following paragraphs describe the proposed revisions.

Definitions. In § 1272.1, FHFA proposes to revise the definition of "new business activity" and to add new definitions for two terms. In response to the Banks' request to narrow the scope of activities requiring prior FHFA approval under part 1272, FHFA is proposing to exclude from the definition of "new business activity" the acceptance of new types of advance collateral, *i.e.*, types of collateral that are legally permissible but that a particular Bank has not previously accepted. Paragraphs (1) and (2) of the existing definition of new business activity, relating to the acceptance of "other real estate related collateral" (ORERC) and "community financial institution collateral" (CFI collateral), respectively, were included in the definition because prior to 1999 the Banks could only accept limited amounts of ORERC and were not authorized to accept CFI collateral at all. The Finance Board found that the Banks lacked sufficient experience with those new collateral types, and specifically included that collateral within the definition of new business activities so it could ensure that the Banks had processes in place to manage the risks associated with the new collateral.[14] In the 16 years since the adoption of the Modernization Rule, most of the Banks have been approved to accept CFI collateral or some forms of ORERC and have developed significant experience in managing the risks associated with those collateral types. Those types of collateral are no longer new, and the remaining universe of new types of collateral that might potentially fall into the ORERC category is small. Thus, FHFA believes that there would be little risk associated with removing the references to these types of collateral from the definition of new business activity, which will allow the Banks to begin accepting any new types of collateral from their members and housing associates without prior regulatory review. Under the proposed rule, FHFA would assess the Banks' acceptance of new types of collateral through its examination process.

The current definition of new business activity also includes any activity that entails risks not previously and regularly managed by the Bank or by the Bank's members. For the reasons articulated in the Banks' Request Letter, FHFA is proposing to delete from the definition the reference to the Banks' members. Nonetheless, FHFA requests comments from the public about whether such deletion could negatively impact the Banks' safety and soundness or mission.

In the Request Letter, the Banks also asked FHFA to add a materiality concept to the rule. The Banks contended that doing so would "enhance [their] ability to assess the regulation's applicability" to particular activities. FHFA has considered this request and proposes to incorporate a materiality provision into the definition of "new business activity." Under the proposed definition, the Banks would be required to submit a notice only for those activities that "entail material risks not previously and regularly managed by the Bank." The scope of this proposed definition would address the agency's principal safety and soundness concerns with respect to NBAs, while also allowing the Banks greater flexibility to initiate those activities, including modifications to existing activities, without prior agency approval. Assessing the materiality of the risks associated with a new activity necessarily will entail some subjective judgments by the Banks. For those instances in which it is unclear whether the risks associated with a proposed activity would be material, FHFA expects that a Bank would discuss the contemplated activity with FHFA staff early in the process to determine whether the risks warrant the submission of an NBA notice. For those instances in which a Bank undertakes a new activity based on its own determination that the associated risks are not material, FHFA expects to assess those decisions as part of the regular examination process, and will address any safety and soundness concerns associated with such activities in the same manner that it addresses such concerns arising from other aspects of a Bank's operations. FHFA specifically requests public comment on whether the proposed inclusion of materiality language within the definition of new business activity is the most appropriate means of incorporating a materiality assessment into the regulation, whether materiality should be defined, and whether limiting the NBA review process to those activities presenting new material risks could present any safety and soundness concerns.

FHFA is also proposing to add two new definitions to the NBA regulation. The proposed rule includes a definition of "business day" because deadlines set forth in the proposed rule would be measured by business days rather than calendar days, as is the case under the current rule. FHFA proposes the use of business days because that approach assures that the review periods for NBA notices will be the same in all cases, even if they are filed during periods of the year that have multiple legal holidays. Lastly, FHFA is proposing to define "NBA Notice Date" as the date on which FHFA receives an NBA notice. The purpose of this new term is to establish a unified start date against which the various deadlines in the proposed rule are to be measured.

Filing Requirement. The proposed rule would not make any changes to § 1272.2, which prohibits the Banks from commencing any NBAs except in accordance with the requirements of the NBA regulations of part 1272.

New Business Activity Notice Requirement. The proposed rule generally restructures part 1272 to clarify the protocol for notice and review of NBAs. Sections 1272.3 through 1272.7 have been reorganized into the Banks' notice requirements, FHFA's review process, requests for additional information, FHFA's examination authority, and delegation of approval authority, respectively. Functionally, most of the provisions are similar to the current regulation, but reorganized to better reflect the order in which they are performed.

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[13] *See* 12 U.S.C. 4513(f).

[14] *See* 65 FR 44420 (July 18, 2000).

In § 1272.3, FHFA proposes retaining the NBA notice requirement with several changes that will limit its scope to describing the items that must be included as part of the notice. First, the proposed rule would relocate the timelines for commencement of an NBA to § 1272.4, as described in detail below. Second, FHFA proposes to replace the current itemized list of required notice contents with a revised list that includes more principles-based submission requirements. FHFA's intent is to provide the Banks greater flexibility in drafting notices that are appropriate to an NBA's scope. The proposed notice requirements are similar to the current requirements in that a notice must address FHFA's core legal and regulatory concerns. Thus, the proposed requirements would generally require that a Bank provide a thorough and complete description of the proposed activity. This approach is intended to afford the Banks additional discretion in tailoring notice contents to the nature of the proposed activity and its corresponding risks. FHFA would retain the authority to require the submission of additional information from the Banks as necessary to evaluate the risks associated with the new activity. *See* proposed §§ 1272.4(b), 1272.5.

The proposed rule would elaborate on the existing requirement that a Bank provide an opinion of counsel relating to the proposed new activity. For NBAs raising legal questions of first impression, FHFA proposes requiring the opinion to provide a thorough analysis of the legal authority for the activity that not only cites the general legal authority, but clearly explains how the cited authority permits the proposed activity. This proposed language is intended to ensure that the Banks perform a robust analysis of each of the legal issues relating to the contemplated new activity at an early stage of the process and provide FHFA with that analysis. A simple statement that counsel has reviewed the proposed activity and concluded that it is legally permissible will not satisfy this requirement.

FHFA proposes removing the itemized list of informational items found in § 1272.3(a)(3), and replacing it with a requirement that the submission provide a full and complete description of the proposed activity. FHFA expects that NBA notices, and especially those for activities not previously approved for any Bank, will need to discuss many of the items listed in the current regulation. However, FHFA recognizes that not all of the existing items in the regulation would be relevant to all notices, and that there will be some activities for which the current listing of items might be underinclusive. The more thorough and clear the submission, the more readily will FHFA be able to evaluate the request.

The proposed notice requirements also specifically ask the Bank to inform FHFA whether the proposed activity represents a modification of an activity that FHFA has previously approved for that Bank, or whether it is an activity that FHFA has approved for any other Banks. Although FHFA generally will recognize when a proposed NBA has been previously approved for other Banks, the submitting Bank should provide this information to help expedite FHFA's decision on the notice. FHFA specifically requests public comment on whether the proposed notice description requirements appropriately balance the FHFA's informational needs with the associated compliance burden imposed on the Banks.

The proposed rule would require a Bank to discuss how the proposed activity would support the Bank's housing finance and community investment mission. The current regulation requires a notice to describe the effect of a proposed activity on the housing or community development market, but does not affirmatively require the Banks to demonstrate how the proposed activity would support the Banks' statutory mission. FHFA's duties include ensuring that the Banks' activities foster such mission, *see* 12 U.S.C. 4513(a). The proposed rule elsewhere includes a related approval standard for NBA notices, which requires that FHFA approve notices only if the activity is conducted in a safe and sound manner and is consistent with the Banks' housing finance and community investment mission. This proposed requirement is also intended to dovetail with the general description requirement so that the submitting Bank produces a comprehensive picture of the proposed activity covering the range of its attributes, from technical production and risk concerns to the activity's potential effects on the Bank's mission.

Paragraphs 1272.3(a)(4) and (5)—regarding the Bank's capacity to manage new risks and its assessment of the risks, respectively—have been combined into proposed § 1272.3(a)(4). FHFA believes that the proposed language captures the fundamental concepts in the current regulation's requirements while streamlining the rule text and reducing the Banks' overall compliance burden.

With respect to the anticipated dollar volume of an activity, the proposed rule clarifies that a Bank is to estimate the volume over the activity's initial three years of operation. This is intended to narrow the scope of the current regulation, which requires an estimate of the dollar volume of the activity over the long- and short-term, and clarifies that the estimate is to be based on anticipated production once the activity begins, especially in cases where the Bank may not immediately implement the new activity.

Finally, FHFA proposes eliminating § 1272.3(b), which addresses the submission requirements for NBAs relating to the acceptance of new types of advance collateral, because the acceptance of new types of collateral would no longer constitute an NBA, as described in the definitions discussion above.

Agency Review. FHFA proposes revising § 1272.4 through § 1272.6 to collapse their respective concepts into a more concise, narrative format and to establish new timelines for agency review of NBA notices. Proposed § 1272.4 establishes FHFA's review process for NBA notices. Under the current regulation, a Bank may commence an NBA 60 days after FHFA's receipt of the associated notice unless FHFA disapproves the activity, instructs the Bank not to commence the activity pending further consideration by the agency, declares its intent to examine the Bank, or requests additional information. *See* § 1272.5(a)(1)–(4). In the Request Letter, the Banks expressed concern that the existing regulation allows FHFA to easily extend its review of NBA notices by either requesting additional information or by instructing the Banks not to commence a new activity shortly after receipt of the notice. *See* § 1272.4(a). The proposed rule would address the concerns by providing for the automatic approval of NBA notices if FHFA fails to act by certain deadlines, as described below. The proposed rule would establish two time periods for FHFA review: A 30 business-day period, generally intended for activities already approved for other Banks, and an 80 business-day period, generally intended for activities of first impression or that otherwise require significant agency examination. Under both proposed timelines, subject to certain extensions and caveats, the Bank would be able to commence the new activity at the end of each time period if FHFA failed to approve, deny, or respond to the Bank regarding the activity.

Proposed § 1272.4(a) sets an initial 30 business-day period for FHFA to approve or deny an activity, or inform the Bank that the request raises legal, policy, or supervisory issues that require further evaluation. Requests raising new legal or policy issues or which pose significant safety and soundness issues would generally be processed under the 80 business-day timeline in proposed § 1272.4(b). If FHFA fails to take one of those three actions by the end of 30 business days from the NBA Notice Date, the proposed rule provides that the notice would be deemed to have been approved and the Bank could commence the activity for which the notice was submitted. If FHFA notifies the Bank that the activity requires further evaluation, then the proposed rule provides that FHFA must approve or deny the notice no later than 80 business days from the NBA Notice Date. If FHFA fails to approve or deny the notice by that date, then it would be deemed to be approved, and the Bank could commence the activity. For all submissions, FHFA intends to approve or deny the notice prior to the applicable deadline, and expects that it will act on many notices substantially before the deadline. FHFA believes that these time periods will afford it sufficient time to review, consider, and fully evaluate the merits of both routine and novel submissions. The proposed rule includes one exception to the automatic approval provisions, which pertains to NBA submissions that raise significant policy issues that the Director determines require additional time. Proposed § 1272.4(d) provides that the Director may extend the 80 business-day period by an additional 60 business days to facilitate such review. In such cases, FHFA will inform the Bank of the extension before the end of the 80 business-day period and the Bank may not commence the proposed activity until FHFA has affirmatively approved the notice. This proposed exception to the automatic approval provisions is intended to preserve the Director's oversight authority on notices deemed by the Director to be of sufficient consequence to merit an extended review period and also to prevent automatic approval of such notices during periods of transition between FHFA Directors or if the Director is otherwise unable to attend to the matter.

Proposed § 1272.4(c) states that for purposes of calculating the number of days that make up the applicable review period, no days would be counted between the day FHFA communicates a request for additional information and the day the Bank responds to all questions asked. One purpose of the automatic approval provisions is to provide some certainty as to the date by which FHFA should act on a notice. In order for FHFA to act, however, it must have a complete notice, including responses to its requests for additional information. Because FHFA may be unable to continue processing a notice while it is awaiting receipt of additional information from a Bank, those days are not included within the applicable time periods. If a Bank's submitted notice is clear and thorough, FHFA expects that there will be less need to request additional information.

FHFA proposes adding new § 1272.4(e), which would establish an explicit standard under which the agency will make determinations with respect to NBAs. The proposed standard considers whether the activity will be conducted in a safe and sound manner and whether the activity is consistent with the housing finance and community investment mission of the Banks and the cooperative nature of the Bank System. The policy considerations underlying this proposed standard stem from FHFA's statutory oversight duties and reflect current agency practice. *See* 12 U.S.C. 4513(a). The current regulation implies, but does not explicitly set forth, a standard for review, and FHFA now proposes a specific standard in keeping with its statutory mission and practice. Further, FHFA proposes to include in the same section a provision authorizing FHFA to impose conditions in connection with the approval of any NBA. This provision is similar to the current provision at § 1272.7(b)(2).

FHFA proposes establishing a revised protocol for additional information requests in proposed § 1272.5. As with the current regulation, FHFA reserves the right to request additional information regarding a proposed NBA. However, FHFA proposes adding several conditions to such requests. Specifically, after FHFA makes an initial request for additional information, any subsequent requests for additional information must be limited to information that is necessary to fully respond to the initial request, *i.e.,* for cases in which a Bank's response was not fully responsive or otherwise requires clarification, or because the Bank's response raises new legal or policy issues not evident based on the notice or the Bank's previous response. FHFA intends for these proposed conditions to facilitate the review process by limiting the scope and circumstances in which FHFA can make subsequent requests for additional information and to incent the Banks to provide clear and thorough submissions and responses to information requests. These limitations notwithstanding, the proposed rule also authorizes the Director to request any additional information regarding any NBA for which the Director has extended the review period. Ultimately, the Director is responsible for supervising the Banks and otherwise ensuring that they act in a safe and sound manner, and this provision of the proposed rule is intended to allow the Director to have whatever information the Director deems necessary to carry out those responsibilities when reviewing an NBA notice. *See* 12 U.S.C. 4513(a)(2)(B). FHFA specifically requests public comments on whether these proposed conditions on requests for additional information appropriately balance FHFA's regulatory duties with the Banks' compliance burden.

Proposed § 1272.6 reorganizes and combines §§ 1272.7(a) and 1272.7(b)(2)(v) into one paragraph, reserving FHFA's right to examine the Banks with respect to their implementation of an NBA.

Delegation of Authority. Proposed § 1272.7 includes a delegation of authority to the Deputy Director for Federal Home Loan Bank Regulation (Deputy Director) to approve NBA submissions, but further provides that the Director reserves the right to modify, rescind, or supersede any such approvals granted under this delegation of authority. The provision is modeled on a similar delegation of authority in 12 CFR 1211.3, which authorizes the Deputy Director to grant "approvals" in accordance with the procedures regulations of that part. Although the term "approval," as defined in § 1211.1, arguably is broad enough to encompass NBA notices, when FHFA first included that delegation in the procedures regulations it explained in the Supplementary Information to the proposed rule that the provisions pertaining to "approvals" did not apply to NBA notices. *See* 79 FR 15257, 15258 (March 19, 2014) (because NBA notices "are subject to the procedural requirements of part 1272 . . . approvals for an NBA would not be subject to" the "approvals" provisions of § 1211.3). FHFA anticipates that most NBA notices will be approved by the Deputy Director pursuant to the proposed delegation of authority and that notices raising novel legal or policy questions will be referred to the Director for decision.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

VI. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1272

Federal home loan banks, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for reasons stated in the **SUPPLEMENTARY INFORMATION** and under the authority of 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a), FHFA proposes to amend subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter D—Federal Home Loan Banks

■ 1. Revise part 1272 to read as follows:

PART 1272—NEW BUSINESS ACTIVITIES

Sec.
1272.1 Definitions.
1272.2 Limitation on Bank authority to undertake new business activities.
1272.3 New business activity notice requirement.
1272.4 Review process.
1272.5 Additional information.
1272.6 Examinations.
1272.7 Approval of notices.

Authority: 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

§ 1272.1 Definitions.

As used in this part:

Business Day means any calendar day other than a Saturday, Sunday, or legal public holiday listed in 5 U.S.C. 6103.

NBA Notice Date means the date on which FHFA receives a new business activity notice.

New business activity (NBA) means any business activity undertaken, transacted, conducted, or engaged in by a Bank that entails material risks not previously managed by the Bank. A Bank's acceptance of a new type of advance collateral does not constitute a new business activity.

§ 1272.2 Limitation on Bank authority to undertake new business activities.

No Bank shall undertake any NBA except in accordance with the procedures set forth in this part.

§ 1272.3 New business activity notice requirement.

Prior to undertaking an NBA, a Bank shall submit a written notice of the proposed NBA that provides a thorough, meaningful, complete, and specific description of the activity such that FHFA will be able to make an informed decision regarding the proposed activity. At a minimum, the notice should include the following information:

(a) A written opinion of counsel identifying the specific statutory, regulatory, or other legal authorities under which the NBA is authorized and, for submissions raising legal questions of first impression, a reasoned analysis explaining how the cited authorities can be construed to authorize the new activity;

(b) A full description of the proposed activity, including, when applicable, infographics and definitions of key terms. In addition, the Bank shall indicate whether the proposed activity represents a modification to a previously approved activity in which the Bank is engaged or is an activity that FHFA has approved for any other Banks;

(c) A discussion of why the Bank proposes to engage in the new activity and how the activity supports the housing finance and community investment mission of the Bank;

(d) A discussion of the risks presented by the new activity and how the Bank will manage these risks; and

(e) A good faith estimate of the anticipated dollar volume of the activity, and the income and expenses associated with implementing and operating the new activity, over the initial three years of operation.

§ 1272.4 Review process.

(a) Within 30 business days of the NBA Notice Date, FHFA will take one of the following actions:

(1) Approve the proposed NBA;

(2) Deny the proposed activity; or

(3) Inform the Bank that the activity raises policy, legal, or supervisory issues that require further evaluation. If FHFA fails to take any of those actions by the 30th business day following the NBA Notice Date, the NBA notice shall be deemed to have been approved and the Bank may commence the activity for which the notice was submitted.

(b) In the case of any notice that FHFA has determined requires further evaluation, FHFA will approve or deny the notice by no later than the 80th business day following the NBA Notice Date. If FHFA fails to approve or deny a NBA notice by that date, and the Director has not extended the review period, the NBA notice shall be deemed to have been approved and the Bank may commence the activity for which the notice was submitted.

(c) For purposes of calculating the review period, no days will be counted between the date that FHFA has requested additional information from the Bank pursuant to § 1272.5 and the date that the Bank responds to all questions communicated.

(d) Notwithstanding anything contained in this part, the Director may extend the 80 business day review period by an additional 60 business days if the Director determines that additional time is required to consider the notice. In such a case, FHFA will inform the Bank of any such extension before the 80th business day following the NBA Notice Date, and the Bank may not commence the NBA until FHFA has affirmatively approved the notice.

(e) In considering any NBA notice, FHFA will assess whether the proposed activity will be conducted in a safe and sound manner and is consistent with the housing finance and community investment mission of the Banks and the cooperative nature of the Bank System. FHFA may deny a NBA notice or may approve the notice, which approval may be made subject to the Bank's compliance with any conditions that FHFA determines are appropriate to ensure that the Bank conducts the new activity in a safe and sound manner and in compliance with applicable laws or regulations and the Bank's mission.

§ 1272.5 Additional information.

FHFA may request additional information from a Bank necessary to issue a determination regarding an NBA. After an initial request for information, FHFA may make subsequent requests for information only to the extent that the information provided by the Bank does not fully respond to a previous request, the subsequent request seeks information needed to clarify the Bank's previous response, or the information provided by the Bank raises new legal, policy, or supervisory issues not evident based on the Bank's NBA notice or responses to previous requests for information. Nothing contained in this paragraph shall limit the Director's authority to request additional information from a Bank regarding an

NBA for which the Director has extended the review period.

§ 1272.6 Examinations.

Nothing in this part shall limit in any manner the right of FHFA to conduct any examination of any Bank relating to its implementation of an NBA, including pre- or post-implementation safety and soundness examinations, or review of contracts or other agreements between the Bank and any other party.

§ 1272.7 Approval of notices.

The Deputy Director for Federal Home Loan Bank Regulation may approve requests from a Bank seeking approval of any NBA notice submitted in accordance with this part. The Director reserves the right to modify, rescind, or supersede any such approval granted by the Deputy Director, with such action being effective only on a prospective basis.

Dated: August 16, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–19858 Filed 8–22–16; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[160519443–6443–01]

RIN 0694–AG97

Temporary Exports to Mexico Under License Exception TMP

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would align the time limit of License Exception Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP), which authorizes, among other things, certain temporary exports to Mexico, with the time limit of Mexico's Decree for the Promotion of Manufacturing, Maquiladora and Export Services (IMMEX) program. Currently, TMP allows for the temporary export and reexport of various items subject to the Export Administration Regulations (EAR), as long as the items are returned no later than one year after export, reexport, or transfer if not consumed or destroyed during the period of authorized use. Other than a four-year period for certain personal protective equipment, the one-year limit extends to all items shipped under license exception TMP. However, the one-year period does not align with the time constraints of Mexico's IMMEX program, which allows imports of items for manufacturing operations on a time limit that may exceed 18 months. This rule proposes to amend TMP to complement the timeline of the IMMEX program. Under this proposed amendment, items temporarily exported or reexported under license exception TMP and imported under the provisions of the IMMEX program would be authorized to remain in Mexico for up to four years from the date of export or reexport.

DATES: Comments must be received by October 24, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2016–0023.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AG97 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG97.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, by telephone (202) 482–2440 or email: *RPD2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Mexico's Decree for the Promotion of Manufacturing, Maquiladora and Export Services, known as IMMEX, is a platform used by U.S. and foreign manufacturers to lower production costs by temporarily importing production materials into Mexico. Created in 2006, IMMEX is the product of the merger of two previous Mexican economic policies: The Maquiladora program, which was designed to attract foreign investment by exempting temporary imports from taxes, and the Temporary Import Program to Promote Exports (PITEX), which incentivized Mexican companies to grow and compete in foreign markets by providing temporary import benefits. Under IMMEX, companies located in Mexico are not subject to quotas and do not have to pay taxes on items temporarily imported and manufactured, transformed, or repaired before reexport.

Under IMMEX, the length of time that imports may remain in Mexico is commodity dependent, with some items allowed to remain in-country for 18 months or more. These time allotments are greater than the time limits for License Exception Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP) allowed under § 740.9(a)(14) of the EAR. With few exceptions, items exported under TMP, if not consumed or destroyed during the authorized use abroad, must be returned to the United States one year after the date of export. The discrepancy between the time periods of IMMEX and TMP reduces the efficacy of both policies, thereby hindering the shipment of items subject to the EAR to and from Mexico.

U.S. companies that produce items subject to the EAR and ship those items to Mexico under IMMEX have notified the Bureau of Industry and Security of this discrepancy and have requested that BIS amend the EAR to increase compatibility with IMMEX. Considering the strength of Mexico's export control regimen, as exemplified by its accession as a member to the Wassenaar Arrangement, the Australia Group, and the Nuclear Suppliers Group, BIS proposes to amend § 740.9(a) to account for IMMEX's time limit. For the purpose of simplicity, BIS does not propose to match the various time periods instituted by IMMEX. Instead, this rule proposes to revise § 740.9(a)(8) to allow temporary exports and reexports to remain in Mexico for up to four years, which accommodates the maximum available time that temporarily imported items may remain in Mexico under IMMEX and is in parallel with the validity period of BIS's licenses. Additionally, this rule proposes to revise introductory paragraph § 740.9(a)(14) to include a reference to § 740.9(a)(8) as an exception to the one-year time limit of TMP.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not contain any collections of information.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

BIS believes that this proposed rule will not have a significant economic impact because exporters are already using other provisions of the EAR to participate in IMMEX. Currently, exporters participating in IMMEX are using TMP for exports of a one-year duration. If the item is to remain in Mexico longer than one year, exporters are required to either use another license exception or apply for a license that will address a specific time limit. This proposed rule merely extends the eligibility period for TMP to four years to complement the lengthy IMMEX time limit which could be 18 months or more, depending on circumstances. Extending the time limit of TMP to four years provides exporters flexibility in complying with the EAR and allows them to take fuller advantage of the privileges granted by IMMEX. While such a provision should reduce the paperwork burden to exporters, BIS does not believe increasing the time limit will lead to a significant increase in exports to Mexico. Rather, this proposed rule is consistent with the principle of the EAR in easing the unnecessary regulatory burden to exporters.

List of Subjects in 15 CFR Parts 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR part 740 of the EAR (15 CFR parts 730–774) is proposed to be amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Section 740.9 is amended by revising paragraphs (a)(8) and introductory paragraph (a)(14) to read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

(a) * * *

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (IMMEX) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States as soon as practicable but no later than four years after the date of export or reexport.

* * * * *

(14) *Return or disposal of items.* With the exception of items described in paragraphs (a)(8) and (11) of this section, all items exported, reexported, or transferred (in-country) under this section must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned to the United States or other country from which the items were so transferred as soon as practicable but no later than one year after the date of export, reexport, or transfer (in-country). Items not returned shall be disposed of or retained in one of the following ways:

* * * * *

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–19670 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–13]

Native American Housing Assistance and Self-Determination Act of 1996: Negotiated Rulemaking Committee Ninth Meeting

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: This notice announces the ninth meeting of the Indian Housing Block Grant (IHBG) negotiated rulemaking committee.

DATES: The ninth meeting is scheduled for Tuesday, September 20, 2016, and Wednesday, September 21, 2016. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:30 p.m.

ADDRESSES: The meeting is scheduled to take place at the Sheraton Midwest City Hotel at the Reed Conference Center, 5750 Will Rogers Rd, Midwest City, OK, 73110.

FOR FURTHER INFORMATION CONTACT: Heidi Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing and Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

On June 5, 2013, HUD announced in the **Federal Register** the list of proposed members for the negotiated rulemaking committee, and requested additional public comment on the proposed membership.

The first eight meetings of the negotiated rulemaking committee were held on the following dates:

- August 27, 2013, and August 28, 2013;
- Tuesday, September 17, 2013, Wednesday, September 18, 2013, and Thursday, September 19, 2013;
- Wednesday, April 23, 2014, Thursday, April 24, 2014, and Friday, April 25, 2014;
- Wednesday, June 11, 2014, Thursday, June 12, 2014, and Friday, June 13, 2014;
- Tuesday, July 29, 2014, Wednesday, July 30, 2014, and Thursday, July 31, 2014;
- Tuesday, August 26, 2014, Wednesday, August 27, 2014, and Thursday, August 28, 2014;
- Tuesday, August 11, 2015, Wednesday, August 12, 2015, and Thursday, August 13, 2015; and
- Tuesday, January 26, 2016, and Wednesday, January 27, 2016.

II. Ninth Committee Meeting

The ninth meeting will be held on Tuesday, September 20, 2016, and Wednesday, September 21, 2016. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:30 p.m. The meeting is scheduled to take place at the Sheraton Midwest City Hotel at the Reed Conference Center, 5750 Will Rogers Rd, Midwest City, OK, 73110.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: August 17, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2016–20115 Filed 8–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0818]

RIN 1625–AA00

Safety Zone; Columbia River, Sand Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for navigable waters of the Columbia River within a 500-yard radius of the small boat "Nessy," while in the area of Sand Island, near Chinook, WA, and all involved associated vessels in support of Double-Crested Cormorant removal operations conducted by the U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River, or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 12, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0818 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services notified the Coast Guard that they intend to conduct federally permitted removal operations of the Double-Crested Cormorant starting September 21, 2016. This operation will involve the use of firearms and live ammunition. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the removal operations will be a safety concern for anyone within a 500-yard radius of the small boat "Nessy," and all involved associated support vessel(s). The safety zone is needed to protect personnel and vessels in the navigable waters within the safety zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled operations. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone regulation from September 21, 2016, through October 21, 2016. The safety zone will cover all navigable waters of the Columbia River within 500 yards of the small boat "Nessy," and all involved associated support vessels being used by personnel during the removal operation, conducted in the area encompassed by these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W. The 500 yard radius area of the safety zone is intended to protect persons and vessels from the dangerous combined effects of live gunfire, unpredictable animal behavior, and a highly dynamic marine environment characterized by strong tides, river currents and wind. This safety zone would be enforced only when the small boat "Nessy," and all involved associated support vessels, are conducting the removal operations. The duration of the zone is intended to protect personnel, vessels, and activists wanting to protest the event in these navigable waters while the removal operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

We learned of the need for the safety zone regulation we are proposing on August 11 2016. We have provided an 18-day comment period for this proposed rule. If after considering comments we decide to issue a temporary final rule, we would need to make that rule effective less than 30 days after publication and would state our good cause for doing so under 5 U.S.C. 553(d)(3).

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting four weeks, for three days a week, that will prohibit entry within 500 yards of the small boat "Nessy" and all involved associated support vessels, while in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W., while personnel are conducting the removal operations of the Double-Crested Cormorant. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0818 to read as follows:

§ 165.T13–0818 Safety Zone; Columbia River.

(a) *Location.* The safety zone covered by this rule will cover all navigable waters of the Columbia River within 500 yards of the small boat "Nessy," and all involved associated support vessels, while in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by members of the U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services onboard the small boat "Nessy," and other federal, state, or local agencies in enforcing this section.

(d) *Enforcement period.* This section is effective from September 21, 2016, through October 21, 2016. It will be enforced when the small boat "Nessy," and all involved associated support vessels, are conducting the removal operations of the Double-Crested Cormorant. The small boat "Nessy" is described as a 20-foot black and gray aluminum work skiff with an overhead light arch. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

Dated: August 17, 2016.

W. R. Timmons,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2016–20132 Filed 8–22–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0429; FRL–9951–16–Region 4]

Air Plan Approval; SC; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on December 18, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. SC DHEC certified that the South Carolina SIP contains provisions that ensure the 2012 Annual

$PM_{2.5}$ NAAQS is implemented, enforced, and maintained in South Carolina. EPA is proposing to determine that portions of South Carolina's infrastructure submission, submitted to EPA on December 18, 2015, satisfy certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0429 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or via telephone at (404) 562–9088.

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. Pursuant to section 110(a)(1) of the CAA, States are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of South Carolina's $PM_{2.5}$ infrastructure SIP submissions[2] for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of South Carolina's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for the "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized later on and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[4]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "South Carolina Air Pollution Control Regulation" or "Regulation" indicates that the cited regulation has been approved into South Carolina's federally-approved SIP. The term "South Carolina statute" indicates cited South Carolina state statutes, which are not a part of the SIP unless otherwise indicated.

[2] South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 18, 2015, is referred to as "South Carolina's $PM_{2.5}$ infrastructure SIP" in this action.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] As mentioned previously, this element is not relevant to this proposed rulemaking.

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from South Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D. Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[6] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[7] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[8] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[9] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[10]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[11]

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[6] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[7] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[9] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[10] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others. Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[12] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[14] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

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[11] For example, implementation of the 1997 fine particulate matter ($PM_{2.5}$) NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[12] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[13] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[14] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)" to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[15] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[18]

IV. What is EPA's analysis of how South Carolina addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

South Carolina's December 18, 2015, infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described later in this preamble.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within South Carolina's SIP are relevant to air quality control regulations. The regulations described later have been federally-approved in the South Carolina SIP and include enforceable emission limitations and other control measures. Regulation 61–62.5, Standard No. 2, *Ambient Air Quality Standards* and Regulation 61–62.1, *Definitions and General Requirements,* provide enforceable emission limits and other control

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[15] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[16] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[17] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.*, 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] *See, e.g.*, EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.*, 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

measures, means, and techniques. Section 48–1–50(23) of the 1976 South Carolina Code of Laws, as amended, (S.C. Code Ann.) provides SC DHEC with the authority to "Adopt emission and effluent control regulations standards and limitations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollutant is present." Collectively these regulations establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to $PM_{2.5}$ concentrations in the ambient air and provide authority for SC DHEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these State regulations and State statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of Section 110(a)(2(A) for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. South Carolina's Air Pollution Control Regulations, Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* along with the *South Carolina Network Description and Ambient Air Network Monitoring Plan,* provide for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48–1–50(14) provides the Department with the necessary authority to "[c]ollect and disseminate information on air and water control." Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On July 20, 2015, South Carolina submitted its plan to EPA. On November 19, 2015, EPA approved South Carolina's monitoring network plan. South Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0429. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). These requirements are met through Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* and Regulation 61–62.5, Standard No. 7.1, *Nonattainment New Source Review,* and 61–62.1, Section II, *Permit Requirements,* of South Carolina's SIP, which pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. These regulations enable SC DHEC to regulate sources contributing to the 2012 Annual $PM_{2.5}$ NAAQS.

Enforcement: SC DHEC's above-described, SIP-approved regulations provide for enforcement of $PM_{2.5}$ emission limits and control measures through construction permitting for new or modified stationary sources. South Carolina cites to statute 48–1–50(11), which provides SC DHEC the authority to administer penalties for violations of any order, permit, regulation or standards; and 48–1–50(10), which authorizes SCDHEC to require and approve construction plans for sources and inspect the construction thereof for compliance with the approved plan. Additionally, SCDHEC is authorized under 48–1–50(3) and (4) to issue orders requiring the discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level, and seek an injunction to compel compliance with the Pollution Control Act and permits, permit conditions and orders.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission.

For the 2012 Annual $PM_{2.5}$ NAAQS, South Carolina's authority to regulate new and modified sources to assist in the protection of air quality in South Carolina is established in Regulations 61–62.1, Section II, *Permit Requirements;* 61–62.5, Standard No. 7, *Prevention of Significant Deterioration* of South Carolina's SIP. These regulations pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. South Carolina also cites to 61–62.5, Standard No. 7.1, *Nonattainment New Source Review.* South Carolina's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21]

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[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. Regulation 61–62.1, Section II, *Permit Requirements* governs the preconstruction permitting of minor modifications and construction of minor stationary sources in South Carolina.

EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for enforcement of control measures, PSD permitting for major sources, and regulation of minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II): *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a NNSR program. As discussed in more detail previously under section 110(a)(2)(C), South Carolina's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy the requirement of prong 3 and a NNSR program at 61–62.5, Standard No. 7.1, *Nonattainment New Source Review.* EPA has made the preliminary determination that South Carolina's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 61–62.5, Standards 7 and 7.1 (q)(2)(iv), *Public Participation,* requires SC DHEC to notify air agencies "whose lands may be affected by emissions" from each new or modified major source if such emissions may significantly contribute to levels of pollution in excess of a NAAQS in any air quality control region outside of South Carolina. Additionally, South Carolina does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve South Carolina's SIP as meeting the requirements of section 110(a)(2)(E). EPA's rationale for this proposal respecting each requirement of section 110(a)(2)(E) is described in turn later in this preamble.

With respect to section 110(a)(2)(E)(i) and (iii), SC DHEC develops, implements and enforces EPA-approved SIP provisions in the State. S.C. Code Ann. Section 48, Title 1, as referenced in South Carolina's infrastructure SIP submission, provides the SC DHEC's general legal authority to establish a SIP and implement related plans. In particular, S.C. Code Ann. Section 48–1–50(12) grants SC DHEC the statutory authority to "[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; [and to] accept, receive and receipt for federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs." S.C. Code Ann. Section 48, Title 2 grants SC DHEC statutory authority to establish environmental protection funds, which provide resources for SC DHEC to carry out its obligations under the CAA. Specifically, in Regulation 61–30, *Environmental Protection Fees,* SC DHEC established fees for sources subject to air permitting programs. SC DHEC implements the SIP in accordance with the provisions of S.C. Code Ann § 1–23–40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1. For Section 110(a)(2)(E)(iii), the submission states that South Carolina does not rely on localities for specific SIP implementation.

The requirements of 110(a)(2)(E)(i) and (iii) are further confirmed when EPA performs a completeness determination for each SIP submittal. This provides additional assurances that each submittal includes information addressing the adequacy of personnel, funding, and legal authority under State law used to carry out the State's implementation plan and related issues. This information is included in all prehearings and final SIP submittal packages for approval by EPA.

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[21] More information concerning how the South Carolina infrastructure SIP submission currently meets applicable requirements for the PSD elements (110(a)(2)(C); (D)(i)(I), prong 3; and (J)) can be found in the technical support document in the docket for this rulemaking.

As evidence of the adequacy of SC DHEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to South Carolina on April 19, 2016, outlining 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to South Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0429. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, SC DHEC's grants were finalized and closed out.

Section 110(a)(2)(E)(ii) requires that states comply with section 128 of the CAA. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

With respect to 110(a)(2)(E)(ii), South Carolina satisfies the requirements of CAA section 128(a)(1) for the South Carolina Board of Health and Environmental Control, which is the "board or body which approves permits and enforcement orders" under the CAA in South Carolina, through S.C. Code Ann. Section 8–13–730. S.C. Code Ann. Section 8–13–730 provides that "[u]nless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates business with which that person is associated," and S.C. Code Ann. Section 8–13–700(A) which provides in part that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." S.C. Code Ann. Section 8–13–700(B)(1)–(5) provides for disclosure of any conflicts of interest by public official, public member or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest . . . be adequately disclosed." These State statutes—S.C. Code Ann. Sections 8–13–730, 8–13–700(A), and 8–13–700(B)(1)–(5)—have been approved into the South Carolina SIP as required by CAA section 128.

EPA has made the preliminary determination that South Carolina has satisfied the requirements of 110(a)(2)(E) for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. SC DHEC's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. SC DHEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These SIP requirements are codified at Regulation 61–62.1, *Definitions and General Requirements,* which provides for emission inventories and other emission monitoring and reporting requirements for stationary sources. R. 61–62.1, Section III, *Emission Inventory,* provides for an emission inventory plan that establishes reporting requirements for various pollutants from permitted facilities on annual or three year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48–1–22 provides the Department with the necessary authority to "Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require." Finally, R. 61–62.1, Section V, *Credible Evidence,* specifies that non-reference test data and other information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the South Carolina SIP.

Additionally, South Carolina is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—NO_X, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Carolina made its latest update to the 2011 NEI on April 8, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* This section of the Act requires that states demonstrate authority comparable

with section 303 of the CAA and adequate contingency plans to implement such authority. Regulation 61–62.3, *Air Pollution Episodes,* provides for contingency measures when an air pollution episode or exceedance may lead to a substantial threat to the health of persons in the state or region. S.C. Code Ann. Section 48–1–290 provides SC DHEC, with concurrent notice to the Governor, the authority to issue an order recognizing the existence of an emergency requiring immediate action as deemed necessary by SC DHEC to protect the public health or property. Any person subject to this order is required to comply immediately. Additionally, S.C. Code Ann. Section 1–23–130 provides SC DHEC with the authority to establish emergency regulations to address an imminent peril to public health, or welfare, and authorizes emergency regulations to protect natural resources if any natural resource related agency in the State finds that abnormal or unusual conditions, immediate need, or the State's best interest require such emergency action. EPA has made the preliminary determination that South Carolina's SIP, State laws, and practices are adequate for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. SC DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in South Carolina. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. S.C. Code Ann. Section 48, Title 1, provides SC DHEC with the necessary authority to revise the SIP to accommodate changes in the NAAQS and thus revise the SIP as appropriate. EPA has made the preliminary determination that South Carolina adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve South Carolina's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for each sub-element is described later in this preamble.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLM), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. South Carolina has SIP-approved state-wide consultation procedures for the implementation of transportation conformity (*see* 69 FR 4245). Implementation of transportation conformity as outlined in the consultation procedures requires SC DHEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Additionally, S.C. Code Section 48–1–50(8) provides SC DHEC with the necessary authority to "Cooperate with the governments of the United States or other states or state agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): Regulation 61–62.3, *Air Pollution Episodes,* requires that SC DHEC notify the public of any air pollution episode or NAAQS violation. S.C. Code Ann. § 48–1–60 establishes that "Classification and standards of quality and purity of the environment [are] authorized after notice and hearing." Additionally, Regulation 61–62.5, Standard 7.1 (q), *Public Participation,* notifies the public by advertisement in a newspaper of general circulation in each region in which a proposed plant or modifications will be constructed of the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as the opportunity to provide written public comment. An opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations is also offered.

EPA also notes that SC DHEC maintains a Web site that provides the public with notice of the health hazards associated with $PM_{2.5}$ NAAQS exceedances, measures the public can take to help prevent such exceedances, and the ways in which the public can participate in the regulatory process. See *http://www.scdhec.gov/HomeAndEnvironment/Air/MostCommonPollutants/ParticulateMatter/*. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is be met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current structural requirements of part C of title I of the CAA for all NSR regulated pollutants. As discussed in more detail previously under the section discussing 110(a)(2)(C), South Carolina's SIP contains provisions for the State's PSD program that reflect required structural PSD requirements to satisfy the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that South Carolina's SIP is adequate for PSD permitting of major sources and major modifications for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. SC DHEC referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so SC DHEC does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that South Carolina's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS is approvable for the visibility protection element of section 110(a)(2)(J) and that South Carolina does not need to rely on its regional haze program.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Regulations 61–62.5, Standard No. 2, *Ambient Air Quality Standards,* and Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models,* as incorporated into the South Carolina SIP. Also, S.C. Code Ann. § 48–1–50(14) provides SC DHEC with the necessary authority to "Collect and disseminate information on air and water control." Additionally, South Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the southeastern states. Taken as a whole, South Carolina's air quality regulations and practices demonstrate that SC DHEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

S.C. Code Ann. Section 48–2–50 prescribes that SC DHEC charge fees for environmental programs it administers pursuant to federal and State law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Regulation 61–30, *Environmental Protection Fees*[22] prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. This regulation may be amended as needed to meet the funding requirements of the State's permitting program. Additionally, South Carolina has a federally-approved title V program, Regulation 61–62.70, *Title V Operating Permit Program,*[23] which fees provide for the implementation and enforcement of the requirements of PSD and NNSR for facilities once they begin operating. EPA has made the preliminary determination that South Carolina's SIP and practices adequately provide for permitting fees related to the 2012 NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP requires that SC DHEC notify the public, which includes local entities, of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Also, as noted previously, S.C. Code Ann. Section 48–1–50(8) allows SC DHEC to "Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." By way of example, SC DHEC has recently worked closely with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Ozone Early Action Compacts. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(M).

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is proposing to approve South Carolina's December 18, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS for the previously described infrastructure SIP requirements. EPA is proposing to approve these portions of South Carolina's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

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[22] This regulation has not been incorporated into the federally-approved SIP.

[23] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27–16–120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, EPA has determined that because this proposed rule does not have substantial direct effects on an Indian Tribe because, as noted previously, this action is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20141 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0486; EPA–R01–OAR–2008–0223; EPA–R01–OAR–2008–0447; EPA–R01–OAR–2009–0358; A–1–FRL–9950–96–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Maine, New Hampshire, Rhode Island and Vermont; Interstate Transport of Air Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the Maine Department of Environmental Protection (ME DEP), the New Hampshire Department of Environmental Services (NH DES), the Rhode Island Department of Environmental Management (RI DEM) and the Vermont Department of Environmental Conservation (VT DEC). These SIP revisions address provisions of the Clean Air Act that require each state to submit a SIP to address emissions that may adversely affect another state's air quality through interstate transport. The EPA is proposing that all four States have adequate provisions to prohibit in-state emissions activities from significantly contributing to, or interfering with the maintenance of, the 2008 ozone National Ambient Air Quality Standards (NAAQS) in other states. The intended effect of this action is to propose approval of the SIP revisions submitted by Maine, New Hampshire, Rhode Island, and Vermont. This action is being taken under the Clean Air Act.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by EPA–R01–OAR–2008–0486 for comments pertaining to our proposed action for Maine, EPA–R01–OAR–2008–0223 for comments pertaining to our proposed action for New Hampshire, EPA–R01–OAR–2008–0447 for comments pertaining to our proposed action for Rhode Island, or EPA–R01–OAR–2009–0358 for comments pertaining to our proposed action for Vermont, at *http://www.regulations.gov,* or via email to *Arnold.Anne@EPA.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically in *www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1664; *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What should I consider as I prepare my comments for EPA?
II. Rulemaking Information
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Rulemaking Information

EPA is proposing to approve SIP submissions from the ME DEP, the NH DES, the RI DEM and the VT DEC. The SIP revisions were submitted on the following dates: October 26, 2015 (ME); November 17, 2015 (NH); June 23, 2015 (RI) and November 2, 2015 (VT). These SIP submissions address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.[1]

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable "infrastructure" elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain "good neighbor" provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements, or "prongs," within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I), often referred to as "prong one" and "prong two." These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" (prong 1) or "interfere with maintenance" (prong 2) of the applicable air quality standard in any other state. We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the eastern portion of the United States in several past regulatory actions.[2] We most recently promulgated the Cross-State Air Pollution Rule (CSAPR), which addressed CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States.[3] CSAPR addressed multiple national ambient air quality standards, but did not address the 2008 8-hour ozone standard.[4] On December 3, 2015, the EPA proposed an update to CSAPR to address the 2008 ozone standard, referred to as the CSAPR Update.[5]

Each of the four states' SIP submissions cited modeling recently conducted by EPA to support the proposed CSAPR Update, asserting that, based on that modeling, emissions from the states did not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

In the original CSAPR rulemaking, the EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered "linked" to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to, or interfere with maintenance of, the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, the EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate.[6] The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. The EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded.[7] In addition, the EPA determined that it was important to use the one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels.[8] The EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a "0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable."[9]

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[1] We note that while the SIP revisions submitted by Maine, New Hampshire, and Rhode Island address only the transport elements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, Vermont's submittal addresses all of the infrastructure elements of CAA section 110(a)(2) for the 2008 ozone NAAQS. Today's action, however, only addresses the transport elements of Vermont's submittal.

[2] NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

[3] 76 FR 48208.

[4] CSAPR addressed the 1997 8-hour ozone, and the 1997 and 2006 fine particulate matter NAAQS.

[5] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (Dec. 3, 2015).

[6] CSAPR proposal, 75 FR 45210, 45237 (August 2, 2010).

In the final CSAPR, the EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the EPA's previous use of a one-percent threshold in CAIR. The EPA used a single "bright line" air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm.[10] The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm.[11]

On August 4, 2015, the EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS.[12] This is the same modeling used to support the proposed CSAPR Update. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. The EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_X and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical documents have been included in the docket for this SIP action.

The modeling data released in the NODA and the proposed CSAPR Update are the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. The EPA is proposing that states with contributions to downwind nonattainment and maintenance receptors less than one percent of the 2008 ozone NAAQS do not significantly contribute to nonattainment or interfere with maintenance pursuant to CAA section 110(a)(2)(D)(i)(I).[13]

For purposes of the 2008 ozone NAAQS, each of the four states at issue in this action have contributions below this significance threshold. The NODA modeling indicates that Maine's ozone contribution to any projected downwind nonattainment site is 0.00 ppb (parts per billion) and Maine's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The NODA modeling indicates that New Hampshire's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and New Hampshire's largest ozone contribution to any projected downwind maintenance-only site is 0.07 ppb. The NODA modeling indicates that Rhode Island's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and Rhode Island's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The NODA modeling indicates that Vermont's largest ozone contribution to any projected downwind nonattainment site is 0.01 ppb and Vermont's largest contribution to any projected downwind maintenance-only site is 0.05 ppb. These ozone contribution values (for Maine, New Hampshire, Rhode Island, and Vermont) are all well below the one percent screening threshold of 0.75 ppb and, therefore, there are no identified linkages between these four states and 2017 downwind projected nonattainment and maintenance sites.[14]

As noted earlier, Maine's October 25, 2015, New Hampshire's November 17, 2015, Rhode Island's June 23, 2015, and Vermont's November 2, 2015 SIP submittals all cite the CSAPR Update modeling discussed above and all conclude that each state neither significantly contributes to nonattainment, nor interferes with maintenance, in downwind states with respect to the 2008 ozone NAAQS. EPA agrees with these conclusions and is, therefore, proposing to approve these SIP revisions.

III. Proposed Action

EPA is proposing to approve the SIP revisions submitted by the states on the following dates as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS: October 26, 2015 (Maine); November 7, 2015 (New Hampshire); June 23, 2015 (Rhode Island); and November 2, 2015 (Vermont). EPA has reviewed these SIP revisions and has found that they satisfy the relevant CAA requirements discussed above. EPA is soliciting public comments on the issues discussed in this document, and will consider those comments before taking final action.

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[7] *See also* Air Quality Modeling Final Rule Technical Support Document, Appendix F, Analysis of Contribution Thresholds, Docket ID # EPA–HQ–OAR–2009–0491.

[8] CSAPR, 76 FR 48208, 48236–37 (August 8, 2011)

[9] Id.

[10] Id.

[11] Id.

[12] *See* 80 FR 46271 (August 4, 2015) (Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)).

[13] The proposed CSAPR Update also proposes to use one percent as the screening threshold to identify upwind states that are "linked" to downwind air pollution problems. *See* 80 FR 75714.

[14] Note that the EPA has not done an assessment to determine the applicability for the use of the one percent screening threshold for all western states that contribute above the one percent threshold to identified air quality problems. There may be additional considerations that may impact regulatory decisions regarding "potential" linkages in the west identified by the modeling.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–20022 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0624; FRL–9951–27–Region 4]

Air Plan Approval; FL: Hillsborough Area; SO_2 Attainment Demonstration

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision, submitted by the State of Florida through the Florida Department of Environmental Protection (FL DEP), to EPA on April 3, 2015, for the purpose of providing for attainment of the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS) in the Hillsborough County SO_2 nonattainment area (hereafter referred to as the "Hillsborough Area" or "Area"). The Hillsborough Area is comprised of a portion of Hillsborough County in Florida surrounding the Mosaic Fertilizer, LLC Riverview plant (hereafter referred to as "Mosaic"). The attainment plan includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measures (RACM) requirements, a reasonable further progress (RFP) plan, a modeling demonstration of SO_2 attainment, and contingency measures for the Hillsborough Area. As a part of approving the attainment demonstration, EPA is also proposing to approve into the Florida SIP the SO_2 emissions limits and associated compliance parameters. This action is being taken in accordance with Clean Air Act (CAA or Act) and EPA's guidance related to SO_2 attainment planning.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0624 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA proposing to take?
II. What is the background for EPA's proposed action?
III. What is included in Florida's attainment plan for the Hillsborough Area?
IV. What is EPA's analysis of Florida's attainment plan for the Hillsborough Area?
  A. Pollutants Addressed
  B. Emissions Inventory Requirements
  C. Air Quality Modeling
  D. RACM/RACT
  E. RFP Plan
  F. Contingency Measures
  G. Attainment Date
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. What action is EPA proposing to take?

EPA is proposing to approve Florida's SIP revision for the Hillsborough Area, as submitted through FL DEP to EPA on April 3, 2015, for the purpose of demonstrating attainment of the 2010 1-hour SO_2 NAAQS. Specifically, EPA is proposing to approve the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Hillsborough Area. Additionally, EPA is proposing to approve specific SO_2 emission limits and compliance parameters established for the two SO_2 sources impacting the Hillsborough Area into the Florida SIP.

EPA has preliminarily determined that Florida's SO_2 attainment plan for the 2010 1-hour SO_2 NAAQS for Hillsborough County meets the applicable requirements of the CAA and EPA's SO_2 Nonattainment Guidance.[1] Moreover, the Hillsborough Area is currently showing a design value below the 2010 SO_2 NAAQS, having implemented most of the control measures included in the SIP submittal. Thus, EPA is proposing to approve Florida's attainment plan for the Hillsborough Area as submitted on April 3, 2015. EPA's analysis for this proposed action is discussed in Section IV of this proposed rulemaking.

II. What is the background for EPA's proposed action?

On June 2, 2010, the EPA Administrator signed a final rule establishing a new SO_2 NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). This action also revoked the existing 1971 annual standard and 24-hour standards, subject to certain conditions.[2] EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to SO_2 emissions ranging from 5 minutes to 24 hours with an array of adverse respiratory effects including narrowing of the airways which can cause difficulty breathing (bronchoconstriction) and increased asthma symptoms. For more information regarding the health impacts of SO_2, please refer to the June 22, 2010 final rulemaking. *See* 75 FR 35520. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations of 29 areas for the 2010 SO_2 NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient data to support a nonattainment designation.[3]

Effective on October 4, 2013, the Hillsborough Area was designated as nonattainment for the 2010 SO_2 NAAQS for an area that encompasses the primary SO_2 emitting source Mosaic fertilizer plant and the nearby SO_2 monitor (Air Quality Site ID: 12–057–0109). The October 4, 2013, final designation triggered a requirement for Florida to submit a SIP revision with a plan for how the Area would attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA section 172(b).

The required components of a nonattainment plan submittal are listed in section 172(c) of part D of the CAA. The base year emissions inventory (section 172(c)(3)) is required to show a "comprehensive, accurate, current inventory" of all relevant pollutants in the nonattainment area. The nonattainment plan must identify and quantify any expected emissions from the construction of new sources to account for emissions in the area that might affect RFP toward attainment, or with attainment and maintenance of the NAAQS, and provide for a nonattainment new source review (NNSR) program (section 172(c)(5)). The attainment demonstration must include a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (section 172(c)). The nonattainment plan must include an analysis of the RACM considered, including RACT (section 172(c)(1)). RFP for the nonattainment area must be addressed in the submittal. Finally, the nonattainment plan must provide for contingency measures (section 172(c)(9)) to be implemented in the case that RFP toward attainment is not made, or the area fails to attain the NAAQS by the attainment date.

III. What is included in Florida's attainment plan for the Hillsborough Area?

In accordance with section 172(c) of the CAA, the Florida attainment plan for the Hillsborough Area includes: (1) An emissions inventory for SO_2 for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes: Technical analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 SO_2 NAAQS; a declaration that FL DEP is unaware of any future growth in the area that would be subject to CAA 173,[4] and the assertion that the NNSR program approved in the SIP at Section 62–252.500, Florida Administrative Code (F.A.C.) would account for any such growth; a modeling analysis of an emissions control strategy for the primary SO_2 source, Mosaic, and a nearby source, the Tampa Electric Company's (TECO's) Big Bend electric generating facility (hereafter referred to as "TECO"), that attains the SO_2 NAAQS by the October 4, 2018 attainment date; a determination that the control strategy for the primary SO_2 source within the nonattainment areas constitutes RACM/RACT; adherence to a construction schedule to ensure emissions reductions are achieved as expeditiously as practicable; a request from FL DEP that emissions reduction measures including system upgrades and/or emissions limitations with schedules for implementation and compliance parameters be incorporated into the SIP; and contingency measures.

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[1] EPA's April 23, 2014 memorandum entitled "Guidance for the 1-Hour SO_2 Nonattainment Area SIP Submissions," hereafter referred to as the "SO_2 Nonattainment Guidance."

[2] EPA's June 22, 2010 final action revoked the two 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour SO_2 standard was retained. Currently, the 24-hour and annual standards are only revoked for those areas the EPA has already designated for the 2010 1-hour SO_2 NAAQS in August 2013 and June 30, 2016, including the Hillsborough Area. *See* 40 CFR 50.4(e).

[3] EPA is continuing its designation efforts for the 2010 SO_2 NAAQS. Pursuant to a court-ordered consent decree finalized March 2, 2015, in the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. By July 2, 2016, EPA must designate areas specified in the March 2, 2015 consent decree based on specific emission criteria. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13–cv–03953–SI (2015). The last two deadlines for completing designations, December 2017 and December 2020 are expected to be informed by information required pursuant the "Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (NAAQS); Final Rule," or "Data Requirements Rule." *See* 80 FR 51052 (August 21, 2015). *http://www.epa.gov/airquality/sulfurdioxide/designations/pdfs/201503Schedule.pdf.* On June 30, 2016, EPA designated a total of 61 areas for the 2010 1-hour SO_2 standard as part of the 2nd round of designations pursuant to the March 2, 2015 consent decree.

[4] The CAA new source review (NSR) program is composed of three separate programs: Prevention of significant deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

IV. What is EPA's analysis of Florida's attainment plan for the Hillsborough Area?

Consistent with CAA requirements (see, section 172), an attainment demonstration for a SO_2 nonattainment area must include a showing that the area will attain the 2010 SO_2 NAAQS as expeditiously as practicable. The demonstration must also meet the requirements of 40 Code of Federal Regulations (CFR) 51.112 and Part 51, Appendix W, and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment. In the case of the Hillsborough Area, 2013–2015 quality-assured and certified air quality data indicated a design value below the 2010 1-hour SO_2 NAAQS. EPA is proposing that the attainment plan submitted by Florida is sufficient, and EPA is proposing to approve the plan to assure ongoing attainment.

A. Pollutants Addressed

Florida's SO_2 attainment plan evaluates SO_2 emissions for the area within the portion of Hillsborough County that is designated nonattainment for the 2010 SO_2 NAAQS. There are no significant precursors to consider for the SO_2 attainment plan. SO_2 is a pollutant that arises from direct emissions, and therefore concentrations are highest relatively close to the source(s) and much lower at greater distances due to dispersion. *See* SO_2 Nonattainment Guidance. Thus, SO_2 concentration patterns resemble those of other directly emitted pollutants like lead and differ from those of photochemically-formed (secondary) pollutants such as ozone. The two sources included in FL DEP's SIP to address the Hillsborough Area and their operations are briefly described later on in this preamble. As the Hillsborough Area includes one such major point source of SO_2 and one source just outside the Area, it is expected that an attainment demonstration addressing SO_2 emissions at these two sources will effectively ensure that the Area will attain by the attainment date of October 4, 2018.

B. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the area. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the NAAQS is as expeditious as practicable. The April 23, 2014, SO_2 Nonattainment Guidance provides that the emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.[5]

For the base year inventory of actual emissions, a "comprehensive, accurate and current," inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation. The final SO_2 Nonattainment Guidance notes that the base year inventory should include all sources of SO_2 in the nonattainment area as well as any sources located outside the nonattainment area which may affect attainment in the area. Florida elected to use 2011 as the base year. Actual emissions from all sources of SO_2 in the Hillsborough Area were reviewed and compiled for the base year emissions inventory requirement. All stationary sources of SO_2 emissions located in the Hillsborough Area were estimated and included in the inventory, and a source outside the Area that FL DEP determined caused or contributed to elevated SO_2 concentrations within the nonattainment area was also included.

The primary SO_2-emitting point source located within the Hillsborough Area is the Mosaic fertilizer plant, which produces acids and fertilizers including sulfuric acid, phosphoric acid, ammonium sulfate, diammonium phosphate, and monoammonium phosphate. Mosaic consists of three main SO_2 emitters and six smaller emitters:

- Emissions Unit (EU) 004 (Mosaic EU 004) is the No. 7 sulfuric acid plant, which burns sulfur and oxygen to form SO_2, then catalytically converts the SO_2 to SO_3, finally absorbing the SO_3 into sulfuric acid, and has a design capacity of 3,200 tons per day (tpd) of 100 percent sulfuric acid;
- Mosaic EU 005 is the No. 8 sulfuric acid plant, which operates similar to Mosaic EU 004 and has a design capacity of 2,700 tpd of 100 percent sulfuric acid;
- Mosaic EU 006 is the No. 9 sulfuric acid plant, which operates similar to Mosaic EU 004 and has a design capacity of 3,400 tpd of 100 percent sulfuric acid; and
- Mosaic EUs 007, 043, 055, 066, 067, and 068 provide various services to other parts of the facility and combine for less than 1 ton per year (tpy); for more information on these miscellaneous units, see the April 3, 2015, submittal.

The emissions at all units for the Mosaic facility were recorded using data collected from continuous emissions monitoring systems (CEMS) and are quality-assured by FL DEP.

The next largest SO_2 source within the nonattainment area is the Ajax Paving Industries, Inc., Plant No. 6 (Ajax), which produces asphalt and recycles reclaimed asphalt. SO_2 emissions from Ajax were 5.91 tons in 2011. Ajax asphalt plant consists of two main SO_2 emitters:

- Ajax EU 005 is a diesel engine and power generator for a crusher; and
- Ajax EU 006 is the drum mix asphalt plant.

The final SO_2 source within the nonattainment area is Harsco Minerals (Harsco), which recycles minerals and byproducts from steel production. SO_2 emissions from Harsco were 0.003 tons in 2011. Harsco consists of one SO_2 emitter:

- Harsco EU001 is a rotary slag dryer.

The largest SO_2 source within 25 kilometers (km) outside the Hillsborough Area is TECO, which is an electric generating facility. The TECO facility consists of four main SO_2 emitters and four smaller SO_2 emitters:

- TECO EUs 001, 002, 003, and 004 are fossil fuel fired steam generators that fire coal or a coal-and-petroleum coke mixture with no more than 20 percent petroleum coke by weight, or coal blended with residual coal from the Polk Power Station and on-site generated fly ash, and which are rated at 445 MW electrical production for EUs 001–003, and 486 MW for EU 004;
- TECO EUs 041, 042, 043, 044, provide energy via simple cycle combustion and diesel generators and combine for less than 1 tpy; for more information on these miscellaneous units, see the April 3, 2015, submittal.

Emissions from the TECO facility were collected via CEMS or calculated.

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[5] The AERR at Subpart A to 40 CFR part 51 cover overarching federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. The EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

Specifically, TECO EUs 001—004, the only significant SO_2 emitters at the facility, are equipped with CEMS, while the remaining units were estimated based on fuel use and actual hour of operation.

Pursuant to Florida's SIP-approved regulations at Chapter 62–210.370, F.A.C., paragraph (3), FL DEP collects annual operating reports (AORs), incorporated by reference into the SIP at 62–210.900(5), from all major sources. These AORs were used to develop the base year inventory for actual emissions for the point sources and satisfy the AERR. FL DEP utilized EPA's 2011 National Emissions Inventory (NEI), Version 2 to obtain estimates of the area and nonroad sources. For onroad mobile source emissions, FL DEP utilized EPA's Motor Vehicle Emissions Simulator (MOVES2014). A more detailed discussion of the emissions inventory development for the Hillsborough Area can be found in Florida's April 3, 2015, submittal.

Table 1 shows the level of emissions, expressed in tpy, in the Hillsborough Area for the 2011 base year by emissions source category. The point source category includes all sources within the nonattainment area as well as TECO, which is located outside the Hillsborough Area, but determined by FL DEP to contribute to nonattainment.

TABLE 1—2011 BASE YEAR EMISSIONS INVENTORY FOR THE HILLSBOROUGH AREA

[tpy]

Year	Point	Onroad	Nonroad	Area	Total
2011	12,145.90	1.96	8.88	2.63	12,159.37

EPA has evaluated Florida's 2011 base year emissions inventory for the Hillsborough Area and has made the preliminary determination that this inventory was developed consistent with EPA's guidance. Therefore, pursuant to section 172(c)(3), EPA is proposing to approve Florida's 2011 base year emissions inventory for the Hillsborough Area.

The attainment demonstration also provides for a projected attainment year inventory that includes estimated emissions for all emission sources of SO_2 which are determined to impact the nonattainment area for the year in which the area is expected to attain the standard. This inventory must address any future growth in the Area. Growth means any potential increases in emissions of the pollutant for which the Hillsborough Area is nonattainment (SO_2) due to the construction and operation of new major sources, major modifications to existing sources, or increased minor source activity. FL DEP included a statement in its April 3, 2015, submittal declaring that FL DEP is unaware of any plans for the growth of major sources in the Hillsborough Area, and that normal minor source growth should not significantly impact the Area. FL DEP further asserts that the NNSR program at Section 62–252.500, F.A.C., approved into the SIP and last updated on June 27, 2008 (*see* 73 FR 36435), would address any proposed new major sources or planned major modifications for SO_2 sources. The NNSR program includes lowest achievable emissions rate, offsets, and public hearing requirements.

FL DEP provided a 2018 projected emissions inventory for all known sources included in the 2011 base year inventory, discussed previously, that were determined to impact the Hillsborough County nonattainment area. The projected 2018 emissions in Table 2 are estimated actual emissions, representing a 49 percent reduction from the base year SO_2 emissions. The point source emissions were estimated by multiplying the 2018 allowable emissions by the ratio of 2011 actual emissions to allowable emissions. Per the SO_2 Nonattainment Guidance, the allowable emissions limits that FL DEP is requesting EPA approve into the SIP as a control measure were modeled to show attainment. These allowable emission limits are higher than the projected actual emissions included in the future year inventory, and therefore offer greater level of certainty that the NAAQS will be protected under all operating scenarios. Emissions estimates for onroad sources were re-estimated with MOVES2014. The nonroad and area source emissions were scaled based on estimated population growth in the Hillsborough Area portion of Hillsborough County.

TABLE 2—PROJECTED 2018 SO_2 EMISSIONS INVENTORY FOR THE HILLSBOROUGH AREA

[tpy]

Year	Point	Onroad	Nonroad	Area	Total
2011	12,145.90	1.96	8.88	2.63	12,159.37
2018	6,211.08	0.75	9.75	2.89	6,224.47

C. Air Quality Modeling

The SO_2 attainment demonstration provides an air quality dispersion modeling analysis to demonstrate that control strategies chosen to reduce SO_2 source emissions will bring the area into attainment by the statutory attainment date of October 4, 2018. The modeling analysis, outlined in Appendix W to 40 CFR part 51 (EPA's Modeling Guidance),[6] is used for the attainment demonstration to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. The analysis requires five years of meteorological data to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest. The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Though the actual emissions are likely to be below the allowable emissions, sources have the ability to run at higher production rates or optimize controls such that emissions approach the allowable emissions limits. A modeling analysis that provides for attainment under all scenarios of operation for each source must therefore consider the worst case scenario of both the meteorology (*e.g.,* predominant wind directions, stagnation, etc.) and the maximum allowable emissions.

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[6] 40 CFR part 51 Appendix W (EPA's *Guideline on Air Quality Models*) (November 2005) located at *http://www3.epa.gov/ttn/scram/guidance/guide/appw_05.pdf.* EPA has proposed changes to Appendix W. *See* 80 FR 45340 (July 29, 2015).

FL DEP's modeling analysis was developed in accordance with EPA's Modeling Guidance and the SO_2 Nonattainment Guidance, and was prepared using EPA's preferred dispersion modeling system, the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD (version 14134) model and two data input preprocessors AERMET (version 14134) and AERMAP (version 11103). AERMINUTE meteorological preprocessor and AERSURFACE surface characteristics preprocessor were also used to develop inputs to AERMET. The Building Profile Input Program for Plume Rise Model Enhancements (BPIP–PRIME) was also used in the downwash-modeling. More detailed information on the AERMOD Modeling system, and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM) (*http://www3.epa.gov/ttn/scram/*) and in Florida's April 3, 2015 SIP submittal in the docket for this proposed action (EPA–R04–OAR–2015–0624) on *www.regulations.gov.* A brief description of the modeling used to support Florida's attainment demonstration is provided later on in this preamble.

1. Modeling Approach

The following is an overview of the air quality modeling approach used to demonstrate compliance with the 2010 SO_2 NAAQS, as submitted in Florida's April 3, 2015, submittal. The basic procedures are outlined later on.

i. FL DEP developed model inputs using the AERMOD modeling system and processors.

The pre-processors AERMET and AERMINUTE were used to process five years (*i.e.,* 2008–2012) of 1-minute meteorological data from the Tampa National Weather Service Office (NWS) at the Tampa International Airport, Tampa, Florida, surface level site, based on FL DEP's land use classifications, in combination with twice daily upper-air meteorological information from the same site. The Tampa International Airport is located approximately 20 km northwest from the Hillsborough Area. The AERMOD pre-processor AERMAP was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. FL DEP used AERSURFACE to generate direction-specific land-use surface characteristics for the modeling. The BPIP–PRIME preprocessor was used to generate direction-specific building downwash parameters. FL DEP developed a Cartesian receptor grid across the nonattainment boundary (extending up to 8.5 km away from the violating monitor), with 100 meter spacing in ambient air to ensure maximum concentrations are captured in the analysis. All other input options were also developed commensurate with the Modeling Guidance.

Next, FL DEP selected a background SO_2 concentration based on local SO_2 monitoring data from monitoring station No. 12–057–0109 for the period January 2012 to December 2013. This background concentration from the nearby ambient air monitor is used to account for SO_2 impacts from all sources that are not specifically included in the AERMOD modeling analysis. The data was obtained from the Florida Air Monitoring and Assessment System. This monitor is approximately 1.0 km to the southeast of Mosaic and 6.5 km north of TECO. This monitor is also the nonattainment monitor. Due to its close proximity to the Mosaic and TECO facilities, monitored concentrations at this station are strongly influenced by emissions from both facilities. As a result, the data was filtered to remove measurements where the wind direction could transport pollutants from Mosaic and TECO to the station. More specifically, the data was filtered to remove measurements where hourly wind direction was between 275° to 4° or 153° to 241°.

ii. FL DEP performed current and post-control dispersion modeling using the EPA-approved AERMOD modeling system.

iii. Finally, FL DEP derived the 99th percentile maximum 1-hour daily SO_2 design value across the five year meteorological data period.

EPA's SO_2 nonattainment implementation guidance provides a procedure for establishing longer-term averaging times for SO_2 emission limits (up to a 30-day rolling averaging time).[7] In conjunction with states' CAA obligation to submit SIPs that demonstrate attainment, EPA believes that air agencies that consider longer term average times for a SIP emission limit should provide additional justification for the application of such limits. This justification involves determining the "critical emission value"[8] or the 1-hour emission limit that modeling found to provide for attainment and adjusting this rate downward to obtain a comparable stringency to the modeled 1-hour average emission limit. A comparison of the 1-hour limit and the proposed longer term limit, in particular an assessment of whether the longer term average limit may be considered to be of comparable stringency to a 1-hour limit at the critical emission value, is critical for demonstrating that any longer term average limits in the SIP will help provide adequate assurance that the plan will provide for attainment and maintenance of the 1-hour NAAQS. This allows states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1 hour, using averaging times as long as 30 days, and still demonstrate attainment of the 2010 SO_2 NAAQS.

EPA's recommended procedure for determining longer term averaging times, including calculating the adjustment factor between the 1-hour critical emission value and the equivalent 30-day rolling average emissions limit, are provided in Appendices B and C of the SO_2 Nonattainment Guidance. EPA is proposing to conclude that FL DEP completed this analysis for both Mosaic and TECO facilities to derive a SIP emission limit with a block 24-hour longer-term averaging time and a rolling 30-day longer-term averaging time, respectively, that are comparatively stringent to the 1-hour limit. For more details, see Florida's April 3, 2015, SIP submittal and accompanying appendices.

2. Modeling Results

The SO_2 NAAQS compliance results of the attainment modeling are summarized in Table 3. Table 3 presents the results from six sets of AERMOD modeling runs that were performed. The six modeling runs were the result of using an uncontrolled, or pre-modification, run and five different controlled, or post-modification, scenarios to account for the proposed control strategy that involves a two-unit and three-unit emissions cap at Mosaic, in addition to individual emissions caps. Maximum allowable permitted emissions limits were used for the Hillsborough Area modeling demonstration. These emissions limits and other control measures were established in construction permits issued by FL DEP, to be incorporated in title V operating permits upon renewal. FL DEP is requesting that these emissions limits and operating conditions, detailed in Section IV.D. of this proposed rulemaking, be adopted into the SIP to become federally enforceable upon approval of the nonattainment plan, prior to the renewal of the title V operating permits for both the Mosaic and TECO facilities. The five post-control runs help to identify the worst possible scenario of emissions distributions between the three units EUs 004–006, the sulfuric acid plants at the Mosaic facility. Under one modeling scenario, an emissions cap of 600 pounds per hour (lb/hr) SO_2 for Mosaic EUs 004–006 is evaluated based on the highest possible impact based on catalyst limitations and maximum sulfuric acid production. This overall cap was then scaled as a 24-hour limit, maintaining comparative stringency with the 1-hour limit (577.8 lb/hr). FL DEP rounded down the limit for an additional buffer from the maximum impact, resulting in a 24-hour limit of 575 lb/hr, which compares to a 1-hour limit of 597 lb/hr. This three-unit emissions cap was then modeled in several configurations to mimic variability in emissions possible under this scenario, apportioning emissions based on each unit emitting at their current individual emissions limit with the remainder of the cap distributed to the other units based on their relative production capacities. The highest impact is presented as the three-unit emissions cap scenario. FL DEP also evaluated a two-unit emissions caps, assuming at any time that two units are operating. The six possible two-unit operating scenarios were evaluated by each unit operating at its current individual emission limit, while the remainder of the 597 lb/hr limit is distributed to the one remaining operating unit. Again, the highest possible impact is presented as the two-unit operating scenario. For the three remaining scenarios, each sulfuric acid plant is assumed to operate alone at its individual emissions cap.

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[7] FL DEP is following the SO_2 Nonattainment Guidance on procedures for establishing emissions limits with averaging periods longer than 1 hour.

[8] The hourly emission rate that the model predicts would result in the 5-year average of the annual 99th percentile of daily maximum hourly SO_2 concentrations at the level of the NAAQS.

The modeling utilized five years (2008–2012) of meteorological data from the NWS site in Tampa, Florida, as processed through AERMET, AERMINTE and AERSURFACE. This procedure was used since this site represented the nearest site with complete data.

Table 3 shows that the maximum 1-hour average across all five years of meteorological data (2008–2012) is less than or equal to the 2010 SO_2 NAAQS of 75 ppb for the five post-control AERMOD modeling runs. For more details, see Florida's April 3, 2015 SIP submittal.

TABLE 3—MAXIMUM MODELED SO_2 IMPACTS IN THE HILLSBOROUGH AREA, MICROGRAMS PER CUBIC METER (ppb)

Model scenario	Averaging time	Maximum predicted impact		Background	Total	SO_2 NAAQS
		Mosaic	TECO			
Pre-modification	1-hour	425.50 (162.4)	0.82 (0.31)	20.40 (7.8)	446.72 (170.5)	196.4 (75)
Three-unit	1-hour	118.90 (45.4)	55.90 (21.3)	21.44 (8.2)	196.24 (74.9)	
Two-unit	1-hour	123.59 (47.2)	52.22 (19.9)	18.83 (7.2)	194.65 (74.3)	
EU 004 only	1-hour	0.33 (0.12)	170.84 (65.2)	17.26 (6.6)	188.43 (71.9)	
EU 005 only	1-hour	0.25 (0.10)	170.84 (65.2)	17.26 (6.6)	188.35 (71.9)	
EU 006 only	1-hour	0.33 (0.12)	170.84 (65.2)	17.26 (6.6)	188.43 (71.9)	

The pre-control analysis resulted in a predicted impact of 170.5 ppb. The post-control analysis resulted in a worst-case predicted impact of 74.9 ppb. EPA is preliminarily determining that this data indicates sufficient reductions in air quality impact with the future implementation of the post-construction control plan for the Mosaic and TECO facilities. Furthermore, EPA is preliminarily concluding that this data also supports FL DEP's analysis that the controls for Mosaic represent RACM and RACT for the SIP. The control strategy for Mosaic, as reflected in its construction Air Permit No. 0570008–080–AC, includes eliminating fuel oil except during periods of natural gas curtailment or disruption; changing the catalyst used to convert SO_2 to SO_3 for improved performance; increasing stack heights for all three sulfuric acid plants from 150 feet (ft) to at least 213.25 ft; and restricting the collective SO_2 emissions to 550 lb/hr under two-unit operating scenarios, and 575 lb/hr under three-unit operating scenarios. The result of increasing a stack height is that the plume has a better opportunity for greater dispersion across an area, minimizing stagnation and local impacts from higher concentrations, primarily due to the avoidance of building downwash effects.[9] Mosaic's allowable SO_2 emissions (total from all three controlled units) will be reduced from 1,140 lb/hr (based on total individual unit emission limits) to a maximum of 575 lb/hr, representing at least a 49 percent allowable emissions decrease. The State will issue a revised title V permit to incorporate the Mosaic construction permit, and meanwhile is proposing the stack height increases and emission limits and operating scenarios related to those various limits be adopted into the SIP for immediate effectiveness authorizing Mosaic to operate in accordance with those conditions.

The control strategy for TECO, as reflected in its construction Air Permit No. 0570039–074–AC, includes the following operational changes to the four largest SO_2-emitting units: Switching fuel oil to natural gas during startup, shutdown and flame stabilization at all four fossil fuel fired steam generators; and a combined emission limit from all four units of 3,162 lb/hr, to become effective no later than June 1, 2016. Florida will incorporate the operational change for TECO into its title V permit upon renewal. TECO's new combined allowable SO_2 emissions from TECO EUs 001–004 will be reduced from 6587.6 lb/hr (based on total individual unit emission limits)[10] to 3,162 lb/hr representing a 52 percent allowable emissions decrease. The modeling results included in Table 3 prove that TECO should be included in the considerations of controls because with several post-control modeling scenarios, TECO would contribute to over 90 percent of the total impact to the Hillsborough Area, and in the worst possible post-control modeling scenario, 28 percent of the total predicted impact on the Hillsborough Area would stem from TECO. Therefore, if no controls were implemented at TECO, the Area would not likely attain and maintain the 2010 SO_2 NAAQS. The collective emission limit and related compliance parameters have been proposed for incorporation into the SIP to make these changes federally enforceable. More details on the pre- and post-construction operations at the facilities are included in Florida's SIP submission. FL DEP asserts that the proposed control strategy significantly lowers the modeled SO_2 impacts from the TECO facility and is sufficient for the Hillsborough Area to attain 2010 SO_2 NAAQS.

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[9] See EPA's June 1985 guidance document, "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations)," which can be found at: *http://www3.epa.gov/scram001/guidance/guide/gep.pdf.*

[10] The individual emission limits were included in the April 3, 2015, submittal.

EPA has reviewed the modeling that Florida submitted to support the attainment demonstration for the Hillsborough Area and has preliminarily determined that this modeling is consistent with CAA requirements, Appendix W and EPA's guidance for SO_2 attainment demonstration modeling.

D. RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all reasonably available control measures as expeditiously as practicable and attainment of the NAAQS. EPA interprets RACM, including RACT, under section 172, as measures that a state determines to be both reasonably available and contribute to attainment as expeditiously as practicable "for existing sources in the area."

Florida's analysis is found in Section 3 of the FL DEP attainment demonstration within the April 3, 2015, SIP submittal. The State determined that controls for SO_2 emissions at Mosaic are appropriate in the Hillsborough Area for purposes of attaining the 2010 SO_2 NAAQS. CAA section 172(c)(1) says that the plan shall provide for RACM, including RACT for "existing sources in the area." Accordingly, Florida only completed a RACM/RACT analysis for Mosaic, since it is the only significant point source within the boundaries of the nonattainment area. The Ajax and Harsco sources resulted in less than 6 tpy between them. FL DEP included TECO in its attainment and impact modeling because of the source's proximity to the Hillsborough Area (within 5 km) and its likelihood of contributing to violations of the SO_2 NAAQS within the area. In a modeling-based attainment demonstration, the means of considering impacts of sources outside the nonattainment area would depend on whether the sources cause significant concentration gradients. Florida proposed a control strategy for the TECO facility, but does not assert that those controls constitute "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility"[11] because section 172(c)(1) provides for the implementation of RACT for existing sources in the area. However, an analysis of attainment needs to consider all potential sources, both inside and outside the nonattainment area that could reasonably cause or contribute to violations of the NAAQS within the area. FL DEP affirms the implementation of controls at TECO significantly lowers the modeled SO_2 impact from the facility and is sufficient to attain 2010 SO_2 NAAQS in the Hillsborough Area. The control measures at both sources are summarized later on in this preamble.

On January 15, 2015, FL DEP issued construction Air Permit No. 0570008–080–AC to Mosaic for additional proposed control measures to reduce SO_2 emissions. The specified limits and conditions from this construction permit, which will be adopted into the title V operating permit upon renewal, reflecting RACT controls, are included in the April 3, 2015, SIP submittal for incorporation into the SIP. The title V permit renewal is currently under review at the State, and is expected to be final by the end of calendar year 2016. The SO_2 Nonattainment Guidance discusses an anticipated control compliance date of January 1, 2017. Areas that implement attainment plan control strategies by this date are expected to be able to show a year of quality-assured air monitoring data showing attainment of the NAAQS and a year of compliance information, which when modeled, would also show attainment of the NAAQS. In accordance with the schedule in the construction permit, Mosaic is required to implement emissions limits by December 15, 2016, complete final increased stack height construction and catalyst changes by November 2017, and the elimination of fuel oil by January 1, 2018. This date, though later than the date suggested in the SO_2 Nonattainment Guidance, provides for 9 months of compliance information by the October 4, 2018 attainment date, including a semiannual compliance report in July 2018. Finally, the Hillsborough Area is currently showing an attaining design value for 2013–2015, which means that attainment of the NAAQS is as expeditious as practicable. FL DEP included in its SIP the required RACT controls listed in the permit and summarized in Table 4:

TABLE 4—SUMMARY OF RACT CONTROLS FOR MOSAIC[12]

Description of measure	Explanation
Mosaic EUs 004–006: The sulfuric acid plants undergo construction and operational changes to: Increase stack heights; change catalysts for sulfuric acid production; and meet two-unit and three-unit enforceable emission limits.	Mosaic was authorized to construct at current stacks for each sulfuric acid plant, increasing the stack height from the existing level of 150 ft to at least 213.25 ft. Mosaic was authorized to change catalysts and system augmentation to ensure compliance with new emission limits. Mosaic has new emission limitations, lowering the allowable SO_2 from all three sulfuric acid plants collectively from 1140 lb/hr to a maximum of 575 lb/hr as a block 24-hour average.[13] These emission limits cover various operating scenarios, including individual unit emissions limits, which remain unchanged from the current permit, along with two-unit and three-unit total limits. All emission limits will be incorporated into the title V operating permit upon renewal and are proposed for incorporation into the SIP.

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[11] Strelow, Roger. "Guidance for Determining the Acceptability of SIP Regulations in Non-Attainment Areas." Memo to Regional Administrators. Office of Air and Waste Management, Environmental Protection Agency. Washington, DC December 9, 1976. Located at: *http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf.*

TABLE 4—SUMMARY OF RACT CONTROLS FOR MOSAIC[12]—Continued

Description of measure	Explanation
Plantwide: Mosaic is required to eliminate fuel oil use	By January 1, 2018, Mosaic will not be authorized to use fuel oil, except during periods of natural gas curtailment or disruption. This condition is included in the construction permit.

On February 26, 2015, construction Air Permit No. 0570039–074–AC was issued to TECO for additional proposed control measures to reduce SO_2 emissions. The specified limits and conditions from this construction permit are to be adopted into the title V operating permit upon renewal, and are intended to supplement the RACT adopted for Mosaic in the Hillsborough Area to help with attainment and maintenance of the 2010 SO_2 NAAQS. These controls are included in the April 3, 2015, SIP submittal for incorporation into the SIP. TECO is required to implement the controls on or before June 1, 2016. The construction is complete and the emission limit is currently in effect. The title V permit renewal is under review at the State currently, and is expected to be final by the end of calendar year 2016. Therefore, the additional control strategy for TECO is in effect. The supplemental control measures at TECO are summarized in Table 4:

TABLE 4—SUMMARY OF SUPPLEMENTAL CONTROL MEASURES FOR TECO

Description of measure	Explanation
TECO EUs 001–004[14]: The fossil fuel fired steam generators undergo an operational change to meet a collective enforceable emission limit.	By June 1, 2016, TECO will comply with a 3,162 lb/hr SO_2 emission limitation as a 30-day rolling average. This collective limit, or cap, will be incorporated into the title V operating permit upon scheduled renewal and is proposed for incorporation into the SIP.

EPA is proposing to approve Florida's determination that the proposed controls for SO_2 emissions at Mosaic constitute RACM/RACT for that source in the Hillsborough Area based on the analysis described previously. Additionally, EPA proposes to approve Florida's determination that the supplemental control measures initiated at TECO help to bring the area into attainment of the 2010 SO_2 NAAQS as expeditiously as practicable. Further, EPA determines that no further controls would be required at Mosaic, and that the proposed controls are sufficient for RACM/RACT purposes for the Hillsborough Area at this time. EPA, therefore, proposes to approve Florida's April 3, 2015, SIP submission as meeting the RACM/RACT requirements of the CAA.

Based on FL DEPs modeling demonstration, the Hillsborough Area is projected to begin showing attaining monitoring values for the 2010 SO_2 NAAQS by the 2018 attainment date. As noted previously, some of the control measures will not be in place a full year prior to the attainment date as recommended in the 2014 SO_2 Nonattainment Guidance; a recommendation intended to provide data to evaluate the effect of the control strategy on air quality. Because the Area is currently attaining the 2010 SO_2 NAAQS, EPA proposes to find that the full control strategy will be in place for an adequate time prior to the attainment date to ensure attainment of the NAAQS. In addition, by approving the RACM/RACT for Mosaic, and the supplemental controls for TECO, for the purposes of Florida's attainment planning, the control measures outlined in Tables 3 and 4 will become permanent and enforceable SIP measures to meet the requirements of the CAA.

E. RFP Plan

Section 172(c)(2) of the CAA requires that an attainment plan includes a demonstration that shows reasonable further progress for meeting air quality standards will be achieved through generally linear incremental improvement in air quality. Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." As stated originally in the 1994 SO_2 Guideline Document[15] and repeated in the 2014 SO_2 Nonattainment Guidance, EPA continues to believe that this definition is most appropriate for pollutants that are emitted from numerous and diverse sources, where the relationship between particular sources and ambient air quality are not directly quantified. In such cases, emissions reductions may be required from various types and locations of sources. The relationship between SO_2 and sources is much more defined, and usually there is a single step between pre-control nonattainment and post-control attainment. Therefore, EPA interpreted RFP for SO_2 as adherence to an ambitious compliance schedule in both the 1994 SO_2 Guideline Document and the 2014 SO_2 Nonattainment Guidance. The control measures for attainment of the 2010 SO_2 NAAQS included in the State's submittal have been modeled to achieve attainment of the NAAQS. The permits and the adoption of specific emissions limits and compliance parameters require these control measures and resulting emissions reductions to be achieved as expeditiously as practicable. As a result of an ambitious compliance schedule, projected to yield a sufficient reduction in SO_2 emissions from the Mosaic and TECO facilities, and resulting in modeled attainment of the SO_2 NAAQS, EPA has preliminarily determined that FL DEP's SO_2 attainment plan for the 2010 SO_2 NAAQS fulfills the RFP requirements for the Hillsborough Area. Currently, the monitored SO_2 design value for the Hillsborough Area is below the NAAQS, and because of the modeled attainment with the selected control strategies, EPA does not anticipate future nonattainment, or that the Area will not meet the statutory October 4, 2018, attainment date. EPA therefore proposes to approve Florida's attainment plan with respect to the RFP requirements.

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[12] The information was pulled from the April 3, 2015 submittal, in which the original construction permit is included. None of these changes authorize an increased production rate at the facility.

[13] See previous discussion on longer-term emission limits. For more information, see the April 3, 2015 submittal.

[14] Additional controls not requested for incorporation into the SIP for TECO EUs 001–004 include the elimination of fuel oil usage as of 180 days prior to June 1, 2016.

[15] SO_2 Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, EPA–452/R–94–008, February 1994. Located at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

F. Contingency Measures

In accordance with section 172(c)(9) of the CAA, contingency measures are required as additional measures to be implemented in the event that an area fails to meet the RFP requirements or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP requirements or fails to meet its attainment date and should contain trigger mechanisms and an implementation schedule. However, SO_2 presents special considerations. As stated in the final 2010 SO_2 NAAQS promulgation on June 22, 2010 (75 FR 35520) and in the 2014 SO_2 Nonattainment Guidance, EPA concluded that because of the quantifiable relationship between SO_2 sources and control measures, it is appropriate that state agencies develop a "comprehensive program to identify sources of violations of the SO_2 NAAQS and undertake an aggressive follow-up for compliance and enforcement."

Based on all the control measures that are planned for Mosaic and completed for TECO, FL DEP believes that the 2010 SO_2 NAAQS can be achieved on a consistent basis. However, if a fourth exceedance of the SO_2 NAAQS occurs during any calendar year, or upon a determination that the Hillsborough Area has failed to attain the NAAQS by the attainment date, Mosaic and TECO will immediately undertake full system audits of controlled SO_2 emissions. Within 10 days, each source will independently submit a report to FL DEP summarizing all operating parameters for four 10-day periods up to and including the dates of the exceedances. These sources are required to deploy provisional SO_2 emission control strategies within this 10-day period and include "evidence that these control strategies have been deployed, as appropriate" in the report to FL DEP. FL DEP will then begin a 30-day evaluation of these reports to determine the cause of the exceedances, followed by a 30-day consultation period with the sources to develop and implement appropriate operational changes necessary to prevent any future violation of the NAAQS. Explicit measures addressed in Florida's April 3, 2015, SIP submittal are:

- Fuel switching to reduce or eliminate the use of sulfur-containing fuels; and/or
- physical or operational reduction of production capacity.

Florida may consider other options for additional controls if these measures are not deemed to be the most appropriate to address air quality issues in the Area.

If a permit modification might be required to conform to applicable air quality standards, Florida will make use of the State's authority in Rule 62–4.080 to require permittees to comply with new or additional conditions. This authority would allow Florida to work directly with the source(s) expeditiously to make changes to permits. Subsequently, Florida would submit any relevant permit change to EPA as a source-specific SIP revision to make the change permanent and enforceable. EPA notes that a contingency measure involving a revised permit or source-specific SIP revision as an acceptable additional step, but according to CAA section 172(c)(9), a measure requiring further action by FL DEP or EPA (*e.g.*, necessitating a revised permit and SIP revision) could not serve as the primary contingency measure.

EPA is proposing to find that Florida's April 3, 2015, SIP submittal includes a comprehensive program to expeditiously identify the source of any violation of the SO_2 NAAQS and for aggressive follow-up. Therefore, EPA proposes that the contingency measures submitted by Florida follow the 2014 SO_2 Nonattainment Guidance and meet the section 172(c)(9). EPA notes that Florida has further committed to pursue additional actions that may require a SIP revision if needed to address the exceedances.

G. Attainment Date

Florida's modeling indicates that the Hillsborough Area will begin attaining the 2010 SO_2 NAAQS by January 1, 2018, once the control strategy is completely implemented. This modeling does not provide for an attaining three-year design value by the proposed attainment date of October 4, 2018. However, expeditious implementation of the additional controls for the TECO source, combined with the actual emissions and implementation of scheduled RACM/RACT for the Mosaic source, has already provided for an attaining design value of 66 ppb considering 2013–2015 data, and exhibited improved data in the years leading up to 2015.[16] The recent design value is well under the NAAQS, and the ongoing compliance schedule for Mosaic control measures will help to assure that the area maintains the NAAQS in the future. Therefore, the area has attained the 2010 SO_2 NAAQS, and is expected to continue to attain the NAAQS by the attainment date.

V. Proposed Action

EPA is proposing to approve Florida's SO_2 attainment plan for the Hillsborough Area. EPA has preliminarily determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is proposing to approve Florida's April 3, 2015, SIP submission, which includes the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Hillsborough Area. Additionally, EPA is proposing to approve into the Florida SIP specific SO_2 emission limits and compliance parameters established for the two SO_2 point sources impacting the Hillsborough Area.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities

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[16] The most recent quality-assured design values for each NAAQS are publicly available at *https://www.epa.gov/air-trends/air-quality-design-values.*

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20118 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0335; FRL–9951–13–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of Control Techniques Guidelines for Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the Commonwealth of Virginia (Virginia). These revisions include amendments to the Virginia Department of Environmental Quality's (VADEQ) regulations and address the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0335 at *http://www.regulations.gov,* or via email to *fernendez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814–3409, or by email at *jones.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 1, 2016, Virginia, through the VADEQ, submitted three revisions to the Virginia SIP concerning the adoption of EPA CTGs for offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings sources in the specific portion of Virginia known as the Northern Virginia Volatile Organic Compound Emissions Control Area.

I. Background

On March 27, 2008, EPA revised the 8-hour ozone standard to a new 0.075 parts per million (ppm) level (73 FR 16436). On May 21, 2012, EPA finalized designations for the 2008 8-hour ozone NAAQS (77 FR 30087) in which the Washington, DC-MD-VA area was designated marginal nonattainment. *See* 40 CFR 81.347. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions.[1] However, the northern portion of Virginia is also part of the Metropolitan Statistical Area of the District Columbia which is in the ozone transport region (OTR) established under section 184(a) of the CAA. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must implement RACT with respect to sources of volatile organic compounds (VOCs) in the state covered by a CTG issued before or after November 15, 1990. In addition, pursuant to CAA section 184(b)(2), stationary sources in states or portions of a state within the OTR that emit at least 50 tons per year of VOCs shall be considered major stationary sources subject to requirements applicable to major stationary sources if the area were classified as a Moderate nonattainment area including requirements for CTGs and RACT.

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[1] EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53761 (September 17, 1979).

Thus, Virginia must implement for its SIP RACT with respect to sources of VOCs covered by CTGs in the northern portion of Virginia that is part of the Metropolitan Statistical Area of the District Columbia and within the OTR (which Virginia refers to as the "Northern Virginia Volatile Organic Compound Emissions Control Area").[2] CAA section 184(b)(1)(B) and (2).

CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information to assist them in determining RACT for VOC from various sources. Section 183(e)(3)(c) provides that EPA may issue a CTG in lieu of a national regulation as RACT for a product category where EPA determines that the CTG will be substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

In 1993, EPA published a draft CTG for offset lithographic printing (58 FR 59261). After reviewing comments on the draft CTG and soliciting additional information to help clarify those comments, EPA published an alternative control techniques (ACT) document in June 1994 that provided supplemental information for states to use in developing rules based on RACT for offset lithographic printing. In 1994, EPA developed an ACT document for industrial cleaning solvents. No previous EPA actions have been taken regarding miscellaneous industrial adhesives application operations. In 1978, EPA published a CTG for miscellaneous metal parts and products and in 1994 EPA published an ACT for the coating of automotive/transportation and business machine plastic parts surface coatings. After reviewing the 1978 and 1993 CTGs and 1994 ACTs for these industries, conducting a review of currently existing state and local VOC emission reduction approaches for these industries, and taking into account any information that has become available since then, EPA developed new CTGs entitled *Control Techniques Guidelines for Offset Lithographic and Letterpress Printing* (Publication No. EPA 453/R–06–002; September 2006); *Control Techniques Guidelines for Industrial Cleaning Solvents* (Publication No. EPA 453/R–06–001; September 2006); *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* (Publication No. EPA 453/R–08–005; September 2008); and *Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings* (Publication No. EPA 453/R–08–003; September 2008). The CTG recommendations may not apply to a particular situation based upon the circumstances of a specific source. Regardless of whether a state chooses to implement the recommendations contained within the CTGs through state rules, or to issue state rules that adopt different approaches for RACT for VOCs, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

II. Summary of SIP Revisions and EPA Analysis

On February 1, 2016, Virginia, through the VADEQ, submitted three revisions to the Virginia SIP concerning the adoption of the EPA CTGs for offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area. These regulations are contained in the following Articles in regulation 9VAC5 Chapter 40, Existing Stationary Sources: Article 56, Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 56.1, Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 57, Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 58, Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; and Article 59, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard. These regulations: (1) Establish applicability for offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings at facilities; (2) establish exemptions; (3) establish emission limitations and work practice requirements; and (4) establish monitoring, notification, record-keeping and reporting requirements.

The SIP revisions also amend regulations 9VAC5 Chapter 40, Existing Stationary Sources, Article 34 and Article 53. In regulation 9VAC5 Chapter 40, Article 34, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems, section 4760, was amended to exempt VOC sources in the Northern Virginia Volatile Organic Compound Emissions Control Area from its provisions. *See* 9VAC5–40–4760. On and after February 1, 2017, these sources are subject to Article 59, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard. Regulation 9VAC5 Chapter 40, Article 53, Emission Standards for Lithographic Printing Processes, section 7800, was amended to exempt offset lithographic printing processes from its provisions and refers applicable facilities to the provisions in Article 56.1, Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard. *See* 9VAC5–40–7800. Virginia has also amended supporting definitions in 9VAC5, Chapter 20, General Provisions which relate to the new CTG standards.

EPA's review of the new and revised regulations submitted by VADEQ finds that the submitted revisions of regulation 9VAC5, Chapter 40, Existing Stationary Sources, and 9VAC5, Chapter 20, General Provisions, address the requirements to adopt RACT for sources located in Virginia covered by EPA's CTG recommendations for control of VOC emissions in accordance with CAA section 184(b)(1)(B) and (2) for the following categories: Offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. EPA also finds the Virginia regulations, which adopt the equivalent of the specific EPA CTG recommendations, address CAA requirements for RACT in sections 172 and 182 as referenced by section 184. More detailed information on these provisions as well as a detailed summary of EPA's review and rationale for proposing to approve these SIP revisions can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2016–0335.

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[2] The northern portion of Virginia is defined as the Northern Virginia Volatile Organic Compound Emissions Control Area in 9VAC5–20–206 (General Provisions).

III. Proposed Action

EPA is proposing to approve the Virginia SIP revisions submitted on February 1, 2016, which consist of amendments to regulation 9VAC5 Chapter 40, Existing Stationary Sources and 9VAC5 Chapter 20, General Provisions, and address the requirement to adopt RACT for sources located in the Northern Virginia VOC Emissions Control Area covered by EPA's CTG standards in accordance with CAA requirements in sections 172, 182 and 184 for the following categories: Offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the VADEQ regulations regarding control of VOC emissions from offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area as described in section II of this proposed action. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the RACT rules for sources in northern Virginia in this action do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 10, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–20143 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0418; FRL–9950–93–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Minor New Source Review—Nonroad Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted on June 17, 2014 pertaining to preconstruction permitting requirements under Virginia's minor New Source Review (NSR) program. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0418 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.com.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 8, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–19878 Filed 8–22–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0523; FRL–9950–83–Region 5]

Air Plan Approval; Indiana; Shipbuilding Antifoulant Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), a submittal by the Indiana Department of Environmental Management dated July 17, 2015. The submittal contains a new volatile organic compound limit for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. The submittal also includes a demonstration that this revision satisfies the anti-backsliding provisions of the Clean Air Act. The submittal additionally removes obsolete dates and clarifies a citation.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0523 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–20011 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0075; FRL–9950–85–Region 5]

Air Plan Approval; Wisconsin; Kenosha County, 2008 8-Hour Ozone Nonattainment Area Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds and oxides of nitrogen for Kenosha County, Wisconsin. Wisconsin submitted an Early Progress Plan for Kenosha County on January 16, 2015. This submittal was developed to establish MVEBs for the Kenosha 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Kenosha 2008 8-Hour ozone nonattainment area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the 2011 base year through a 2015 target year.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0075 at *http://www.regulations.gov* or via email to *persoon.carolyn@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–20008 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0623; FRL–9951–32–Region 4]

Air Plan Approval; FL: Nassau Area; SO_2 Attainment Demonstration

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision, submitted by the State of Florida through the Florida Department of Environmental Protection (FL DEP), to EPA on April 3, 2015, for the purpose of providing for attainment of the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS) in the Nassau County SO_2 nonattainment area (hereafter referred to as the "Nassau Area" or "Area"). The Nassau Area is comprised of a portion of Nassau County in Florida surrounding the Rayonier Performance Fibers, LLC sulfite pulp mill (hereafter referred to as "Rayonier"). The attainment plan includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measures (RACM), a reasonable further progress (RFP) plan, a modeling demonstration of SO_2 attainment, and contingency measures for the Nassau Area. As a part of approving the attainment demonstration, EPA is also proposing to approve into the Florida SIP the SO_2 emissions limits and associated compliance parameters. This action is being taken in accordance with Clean Air Act (CAA or Act) and EPA's guidance related to SO_2 attainment planning.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0623 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov or via telephone at (404)562–9089.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA proposing to take?
II. What is the background for EPA's proposed action?
III. What is included in Florida's attainment plan for the Nassau Area?
IV. What is EPA's analysis of Florida's attainment plan for the Nassau Area?
  A. Pollutants Addressed
  B. Emissions Inventory Requirements
  C. Air Quality Modeling
  D. RACM/RACT
  E. RFP Plan
  F. Contingency Measures
  G. Attainment Date
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. What action is EPA proposing to take?

EPA is proposing to approve Florida's SIP revision for the Nassau Area, as submitted through FL DEP to EPA on April 3, 2015, for the purpose of demonstrating attainment of the 2010 1-hour SO_2 NAAQS. Specifically, EPA is proposing to approve the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Nassau Area. Additionally, EPA is proposing to approve specific SO_2 emission limits and compliance parameters established for the two SO_2 sources impacting the Nassau Area into the Florida SIP.

EPA has preliminarily determined that Florida's SO_2 attainment plan for the 2010 1-hour SO_2 NAAQS for Nassau County meets the applicable requirements of the CAA and EPA's SO_2 Nonattainment Guidance.[1] Moreover, the Nassau Area is currently showing a design value below the 2010 SO_2 NAAQS, having implemented most of the control measures included in the SIP submittal. Thus, EPA is proposing to approve Florida's attainment plan for the Nassau Area as submitted on April 3, 2015. EPA's analysis for this proposed action is discussed in Section IV of this proposed rulemaking.

II. What is the background for EPA's proposed action?

On June 2, 2010, the EPA Administrator signed a final rule establishing a new SO_2 NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). This action also revoked the existing 1971 annual standard and 24-hour standards, subject to certain conditions.[2] EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to SO_2 emissions ranging from 5 minutes to 24 hours with an array of adverse respiratory effects including narrowing of the airways which can cause difficulty breathing (bronchoconstriction) and increased asthma symptoms. For more information regarding the health impacts of SO_2, please refer to the June 22, 2010 final rulemaking. *See* 75 FR 35520. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations of 29 areas for the 2010 SO_2 NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient data to support a nonattainment designation.[3]

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[1] EPA's April 23, 2014 memorandum entitled "Guidance for the 1-Hour SO_2 Nonattainment Area SIP Submissions," hereafter referred to as the "SO_2 Nonattainment Guidance."

[2] EPA's June 22, 2010 final action revoked the two 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour SO_2 standard was retained. Currently, the 24-hour and annual standards are only revoked for those areas the EPA has already designated for the 2010 1-hour SO_2 NAAQS in August 2013 and June 30, 2016, including the Nassau Area. *See* 40 CFR 50.4(e).

[3] EPA is continuing its designation efforts for the 2010 SO_2 NAAQS. Pursuant to a court-ordered consent decree finalized March 2, 2015, in the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. By July 2, 2016, EPA must designate areas specified in the March 2, 2015 consent decree based on specific emission criteria. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13-cv-03953–SI (2015). The last two deadlines for completing designations, December 2017 and December 2020 are expected to be informed by information required pursuant the "Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air

Effective on October 4, 2013, the Nassau Area was designated as nonattainment for the 2010 SO_2 NAAQS for an area that encompasses the primary SO_2 emitting source Rayonier sulfite pulp mill and the nearby SO_2 monitor (Air Quality Site ID: 12–089–0005). The October 4, 2013, final designation triggered a requirement for Florida to submit a SIP revision with a plan for how the Area would attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA section 172(b).

The required components of a nonattainment plan submittal are listed in section 172(c) of part D of the CAA. The base year emissions inventory (section 172(c)(3)) is required to show a "comprehensive, accurate, current inventory" of all relevant pollutants in the nonattainment area. The nonattainment plan must identify and quantify any expected emissions from the construction of new sources to account for emissions in the area that might affect RFP toward attainment, or with attainment and maintenance of the NAAQS, and provide for a nonattainment new source review (NNSR) program (section 172(c)(5)). The attainment demonstration must include a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (section 172(c)). The nonattainment plan must include an analysis of the RACM considered, including RACT (section 172(c)(1)). RFP for the nonattainment area must be addressed in the submittal. Finally, the nonattainment plan must provide for contingency measures (section 172(c)(9)) to be implemented in the case that RFP toward attainment is not made, or the area fails to attain the NAAQS by the attainment date.

III. What is included in Florida's attainment plan for the Nassau Area?

In accordance with section 172(c) of the CAA, the Florida attainment plan for the Nassau Area includes: (1) An emissions inventory for SO_2 for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes: Technical analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 SO_2 NAAQS; a declaration that FL DEP is unaware of any future growth in the area that would be subject to CAA 173,[4] and the assertion that the NNSR program approved in the SIP at Section 62–252.500, Florida Administrative Code (F.A.C.) would account for any such growth; a modeling analysis of an emissions control strategy for the Rayonier sulfite pulp mill[5] and a nearby source, the WestRock CP, LLC kraft pulp mill (formerly RockTenn kraft pulp mill)[6] (hereafter referred to as "WestRock"), that attains the SO_2 NAAQS by the October 4, 2018 attainment date; a determination that the control strategy for the primary SO_2 source within the NAA constitutes RACM/RACT; adherence to a construction schedule to ensure emissions reductions are achieved as expeditiously as practicable; a request from FL DEP that emissions reduction measures including system upgrades and/or emissions limitations with schedules for implementation and compliance parameters be incorporated into the SIP; and contingency measures.[7]

IV. What is EPA's analysis of Florida's attainment plan for the Nassau Area?

Consistent with CAA requirements (see, *e.g.*, section 172), an attainment demonstration for a SO_2 nonattainment area must include a showing that the area will attain the 2010 SO_2 NAAQS as expeditiously as practicable. The demonstration must also meet the requirements of 40 Code of Federal Regulations (CFR) 51.112 and Part 51, Appendix W, and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment. In the case of the Nassau Area, 2013–2015 quality-assured and certified air quality data indicated a design value below the 2010 1-hour SO_2 NAAQS. EPA is proposing that the attainment plan submitted by Florida is sufficient, and EPA is proposing to approve the plan to assure ongoing attainment.

A. Pollutants Addressed

Florida's SO_2 attainment plan evaluates SO_2 emissions for the portion of Nassau County that is designated nonattainment for the 2010 SO_2 NAAQS. There are no significant precursors to consider for the SO_2 attainment plan. SO_2 is a pollutant that arises from direct emissions, and therefore concentrations are highest relatively close to the source(s) and much lower at greater distances due to dispersion. *See* SO_2 Nonattainment Guidance. Thus, SO_2 concentration patterns resemble those of other directly emitted pollutants like lead and differ from those of photochemically-formed (secondary) pollutants such as ozone. The two sources included in FL DEP's SIP to address the Nassau Area and their operations are briefly described later in this preamble. As the Nassau Area includes one such major point source of SO_2 and one source just outside the Area, it is expected that an attainment demonstration addressing SO_2 emissions at these two sources will effectively ensure that the Area will attain by the attainment date of October 4, 2018.

B. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the area. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the NAAQS is as expeditious as practicable.

Quality Standard (NAAQS); Final Rule," or "Data Requirements Rule." *See* 80 FR 51052 (August 21, 2015). *http://www.epa.gov/airquality/sulfurdioxide/designations/pdfs/201503Schedule.pdf.* On June 30, 2016, EPA designated a total of 61 areas for the 2010- 1-hour SO_2 standard as part of the 2nd round of designations pursuant to the March 2, 2015 consent decree. *See* 81 FR 45039.

[4] The CAA new source review (NSR) program is composed of three separate programs: Prevention of significant deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

[5] Rayonier processes high purity wood pulp used in manufacturing photographic films, filters, rayon fabric and other industrial and consumer products.

[6] The new company name of WestRock reflects the recent merger between companies MeadWestCo and RockTenn. FL DEP issued an administrative revision to the operating permit, revision number 0890003–048–AV, on August 19, 2015 to reflect this administrative change in company name. The April 3, 2015, final SIP submittal was prior to this merger, and therefore refers to WestRock as RockTenn. WestRock produces various containerboard products.

[7] General Conformity pursuant to CAA section 176(c) requires that actions by federal agencies do not cause new air quality issues or delay or interfere with attainment of a NAAQS. With respect to the Nassau nonattainment area federal agencies must work with the state to ensure that federal actions conform to the air quality plans established in the applicable SIP that ensures attainment of the SO_2 NAAQS.

The April 23, 2014, SO_2 Nonattainment Guidance provides that the emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.[8]

For the base year inventory of actual emissions, a "comprehensive, accurate and current," inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation. The final SO_2 Nonattainment Guidance notes that the base year inventory should include all sources of SO_2 in the nonattainment area as well as any sources located outside the nonattainment area which may affect attainment in the area. Florida elected to use 2011 as the base year. Actual emissions from all sources of SO_2 in the Nassau Area were reviewed and compiled for the base year emissions inventory. Emissions from all stationary sources of SO_2 located in the Nassau Area were estimated and included in the inventory, and a source outside the Area that FL DEP determined caused or contributed to elevated SO_2 concentrations within the nonattainment area was also included.

The primary SO_2-emitting point source located within the Nassau Area is the Rayonier sulfite pulp mill, which produces films, fibers and fabrics among other consumer products. Rayonier consists of three main SO_2 emitters:

- Emissions Unit (EU) 005 (Rayonier EU 005) is the vent gas scrubbing system, which handles emissions from numerous vents from the cooking acid plant, the red stock washers, the unwashed stock tank, the spent sulfite liquor storage tanks, the spent sulfite liquor washer area, the digesters, and the blow pits;
- Rayonier EU 006 is the sulfite recovery boiler, which fires spent liquor to produce combustion gases that contain recoverable SO_2 and heat for steam generation;
- Rayonier EU 022 is the power boiler, which fires biomass and No. 6 fuel oil to produce heat for steam generation; and
- Rayonier EU 005 is itself a control technology, utilizing a wet alkaline absorbing section for SO_2 removal, while Rayonier EU 006 and EU 022 each have wet alkaline scrubbers in place.

The emissions at all units for the Rayonier facility were recorded using data collected from continuous emissions monitoring systems (CEMS) and are quality-assured by FL DEP.

The largest SO_2 source within 25 kilometers (km) outside the Nassau Area is WestRock. The WestRock facilities consist of five main SO_2 emitters:

- Emissions Unit 006 (WestRock EU 006) is the No. 5 power boiler, which fires biomass and No. 6 fuel oil to produce heat for steam generation;
- WestRock EUs 007 and 011 are recovery boilers, which fire black liquor solids to produce heat for steam generation and recover process chemicals;
- WestRock EU 015 is the No. 7 power boiler, which fires coal, oil and/or natural gas to produce heat for steam generation; and
- WestRock EU 021 is a lime kiln, which burns low volume, high density non-condensable gases (NCGs) from several units across the plant in addition to its primary purpose of converting calcium carbonate to lime.

WestRock EU 006 currently serves as a backup control device for NCGs that pass through WestRock EU 021.

Emissions from the WestRock facility were collected via CEMS or calculated. Specifically, WestRock EUs 007, 011, and 015 did not previously have CEMS installed. In this instance, the emission rates of SO_2 were calculated, as shown in Appendix B of the April 3, 2015, submittal. For WestRock EU 015, the hourly feed rates of coal, fuel oil and/or natural gas burned are included along with the particular emission factors used to calculate the SO_2 emissions rates. For WestRock EUs 007 and 011, the hourly rates of the black liquor solids and/or oil burned are included along with the particular emission factors used to calculate the SO_2 emissions rates.

Pursuant to Florida's SIP-approved regulations at Chapter 62–210.370, F.A.C., paragraph (3), FL DEP collects annual operating reports (AORs), incorporated by reference into the SIP at 62–210.900(5), from all major sources. These AORs were used to develop the base year inventory for actual emissions for the point sources and satisfy the AERR. FL DEP utilized EPA's 2011 National Emissions Inventory (NEI), Version 2 to obtain estimates of the area and nonroad sources. For onroad mobile source emissions, FL DEP utilized EPA's Motor Vehicle Emissions Simulator (MOVES2014). A more detailed discussion of the emissions inventory development for the Nassau Area can be found in Florida's April 3, 2015, submittal.

Table 1 shows the level of emissions, expressed in tpy, in the Nassau Area for the 2011 base year by emissions source category. The point source category includes WestRock, outside the Nassau Area, but determined by FL DEP to contribute to nonattainment.

TABLE 1—2011 BASE YEAR EMISSIONS INVENTORY FOR THE NASSAU AREA

[tpy]

Year	Point	Onroad	Nonroad	Area	Total
2011	4,278.64	0.08	0.09	0.39	4,279.20

EPA has evaluated Florida's 2011 base year emissions inventory for the Nassau Area and has made the preliminary determination that this inventory was developed consistent with EPA's guidance. Therefore, pursuant to section 172(c)(3), EPA is proposing to approve Florida's 2011 base year emissions inventory for the Nassau Area.

The attainment demonstration also provides for a projected attainment year inventory that includes estimated emissions for all emission sources of SO_2 which are determined to impact the nonattainment area for the year in which the area is expected to attain the standard. This inventory must address any future growth in the Area. Growth means any potential increases in emissions of the pollutant for which the Nassau Area is nonattainment (SO_2) due to the construction and operation of new major sources, major modifications to existing sources, or increased minor source activity. FL DEP included a statement in its April 3, 2015, submittal declaring that FL DEP is unaware of any plans for the growth of major sources in the Nassau Area, and that normal minor source growth should not significantly impact the Area. FL DEP further asserts that the NNSR program at Section 62–252.500, F.A.C., approved into the SIP and last updated on June 27, 2008 (*see* 73 FR 36435), would address any proposed new major sources or planned major modifications for SO_2 sources.[9] The NNSR program includes lowest achievable emissions rate, offsets, and public hearing requirements.

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[8] The AERR at Subpart A to 40 CFR part 51 cover overarching federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. The EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

FL DEP provided a 2018 projected emissions inventory for all known sources included in the 2011 base year inventory, discussed previously, that were determined to impact the Nassau County NAA. The projected 2018 emissions in Table 2 are estimated actual emissions, representing a 21 percent reduction from the base year SO_2 emissions. The point source emissions were estimated by multiplying the 2018 allowable emissions by the ratio of 2011 actual emissions to allowable emissions. Per the SO_2 Nonattainment Guidance, the allowable emission limits that FL DEP is requesting EPA approve into the SIP as a control measure were modeled to show attainment. These allowable emission limits are higher than the projected actual emissions included in the future year inventory, and therefore offer greater level of certainty that the NAAQS will be protected under all operating scenarios. Emissions estimates for onroad sources were re-estimated with MOVES2014. The nonroad and area source emissions were scaled based on estimated population growth in the Nassau Area portion of Nassau County.

TABLE 2—PROJECTED 2018 SO_2 EMISSIONS INVENTORY FOR THE NASSAU AREA

[tpy]

Year	Point	Onroad	Nonroad	Area	Total
2011	4,278.64	0.08	0.09	0.39	4,279.20
2018	3,376.26	0.03	0.10	0.41	3,376.80

C. Air Quality Modeling

The SO_2 attainment demonstration provides an air quality dispersion modeling analysis to demonstrate that control strategies chosen to reduce SO_2 source emissions will bring the area into attainment by the statutory attainment date of October 4, 2018. The modeling analysis, outlined in Appendix W to 40 CFR part 51 (EPA's Modeling Guidance),[10] is used for the attainment demonstration to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. The analysis requires five years of meteorological data to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest. The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Though the actual emissions are likely to be below the allowable emissions, sources have the ability to run at higher production rates or optimize controls such that emissions approach the allowable emissions limits. A modeling analysis that provides for attainment under all scenarios of operation for each source must therefore consider the worst case scenario of both the meteorology (*e.g.,* predominant wind directions, stagnation, etc.) and the maximum allowable emissions.

FL DEP's modeling analysis was developed in accordance with EPA's Modeling Guidance and the SO_2 Nonattainment Guidance, and was prepared using EPA's preferred dispersion modeling system, the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD (version 14134) model and two data input preprocessors AERMET (version 14134) and AERMAP (version 11103). AERMINUTE meteorological preprocessor and AERSURFACE surface characteristics preprocessor were also used to develop inputs to AERMET. The Building Profile Input Program for Plume Rise Model Enhancements (BPIP–PRIME) was also used in the downwash-modeling. More detailed information on the AERMOD Modeling system, and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM) (*http://www3.epa.gov/ttn/scram/*) and in Florida's April 3, 2015, SIP submittal in the docket for this proposed action (EPA–R04–OAR–2015–0623) on *www.regulations.gov.* A brief description of the modeling used to support Florida's attainment demonstration is provided later on.

1. Modeling Approach

The following is an overview of the air quality modeling approach used to demonstrate compliance with the 2010 SO_2 NAAQS, as submitted in Florida's April 3, 2015, submittal. The basic procedures are outlined later in this preamble.

i. FL DEP developed model inputs using the AERMOD modeling system and processors.

The pre-processors AERMET and AERMINUTE were used to process five years (*i.e.,* 2008–2012) of 1-minute meteorological data from the Jacksonville National Weather Service Office (NWS) at the Jacksonville International Airport, Jacksonville, Florida, surface level site, based on FL DEP's land use classifications, in combination with twice daily upper-air meteorological information from the same site. The Jacksonville International Airport is located approximately 28 km southeast from Nassau Area. The AERMOD pre-processor AERMAP was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. FL DEP used AERSURFACE to generate direction-specific land-use surface characteristics for the modeling. The BPIP–PRIME preprocessor was used to generate direction-specific building downwash parameters. FL DEP developed a Cartesian receptor grid across the nonattainment boundary (approximately 2.4 km around the violating monitor), with 100 meter spacing in ambient air to ensure maximum concentrations are captured in the analysis. All other input options were also developed commensurate with the Modeling Guidance.

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[9] FL DEP acknowledges a minor source permit to construct a natural gas-fired combustion turbine cogeneration system within the Nassau nonattainment area located on the Rayonier property. The turbine would produce process steam for the co-located Rayonier plant which would generate up to 21 megawatts provided to the electrical grid. Because the turbine is natural-gas fired, maximum annual SO_2 emissions would be less than 7 tons per year (tpy) and not subject to NNSR. FL DEP determined that these small SO_2 emissions resulting from the new facility would not interfere with the attainment plan for the Nassau Area.

[10] 40 CFR part 51 Appendix W (EPA's *Guideline on Air Quality Models*) (November 2005) located at *http://www3.epa.gov/ttn/scram/guidance/guide/appw_05.pdf.* EPA has proposed changes to Appendix W. *See* 80 FR 45340 (July 29, 2015).

Next, FL DEP selected a background SO_2 concentration based on local SO_2 monitoring data from monitoring station No. 12–089–0005 for the period January 2012 to December 2013. This background concentration from the nearby ambient air monitor is used to account for SO_2 impacts from all sources that are not specifically included in the AERMOD modeling analysis. The data was obtained from the Florida Air Monitoring and Assessment System. This monitor is approximately 0.9 km to the southeast of Rayonier and 2.5 km south of WestRock. Due to its close proximity to the Rayonier facility, monitored concentrations at this station are strongly influenced by emissions from both facilities. As a result, the data was filtered to remove measurements where the wind direction could transport pollutants from Rayonier and WestRock to the station. More specifically, the data was filtered to remove measurements where hourly wind direction was between 263° to 61°.

ii. FL DEP performed current and post-control dispersion modeling using the EPA-approved AERMOD modeling system.

iii. Finally, FL DEP derived the 99th percentile maximum 1-hour daily SO_2 design value across the five year meteorological data period.

EPA's SO_2 nonattainment implementation guidance provides a procedure for establishing longer-term averaging times for SO_2 emission limits (up to a 30-day rolling averaging time).[11] In conjunction with states' CAA obligation to submit SIPs that demonstrate attainment, EPA believes that air agencies that consider longer term average times for a SIP emission limit should provide additional justification for the application of such limits. This justification involves determining the "critical emission value" [12] or the 1-hour emission limit that modeling found to provide for attainment and adjusting this rate downward to obtain a comparable stringency to the modeled 1-hour average emission limit. A comparison of the 1-hour limit and the proposed longer term limit, in particular an assessment of whether the longer term average limit may be considered to be of comparable stringency to a 1-hour limit at the critical emission value, is critical for demonstrating that any longer term average limits in the SIP will help provide adequate assurance that the plan will provide for attainment and maintenance of the 1-hour NAAQS. This allows states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1 hour, using averaging times as long as 30-days, and still demonstrate attainment of the 2010 SO_2 NAAQS.

EPA's recommended procedure for determining longer term averaging times, including calculating the adjustment factor between the 1-hour critical emission value and the equivalent 30-day rolling average emissions limit, is provided in Appendices B and C of the SO_2 Nonattainment Guidance. EPA is proposing to conclude that FL DEP completed this analysis for both Rayonier and WestRock facilities to derive SIP emission limits with 3-hour longer-term averaging time that are comparatively stringent to the 1-hour limit. For more details, see Florida's April 3, 2015, SIP submittal.

2. Modeling Results

The SO_2 NAAQS compliance results of the attainment modeling are summarized in Table 3 later on in this preamble. Table 3 presents the results from four sets of AERMOD modeling runs that were performed. The four modeling runs were the result of using an uncontrolled, or pre-modification, run and three different controlled, or post-modification, scenarios. Maximum allowable permitted emissions limits were used for the Nassau Area modeling demonstration. These emissions limits and other control measures were established in construction permits issued by FL DEP. The conditions have been incorporated in the latest title V permit renewal for Rayonier, and will be incorporated for WestRock upon future title V renewal. FL DEP is requesting that these emissions limits and operating conditions, detailed in Section IV.D. of this proposed rulemaking, be adopted into the SIP to become federally enforceable upon approval of the nonattainment plan, prior to the renewal of the title V operating permit for the WestRock facility. The three post-control runs help to identify the worst possible scenario of emissions distributions between the two units EUs 007 and 011 (recovery boilers) at the WestRock facility. Under one modeling scenario, an emissions cap of 300 pounds per hour (lb/hr) SO_2 for WestRock EUs 007 and 011 is allotted equally between the recovery boilers. For the two remaining scenarios, the entire 300 lb/hr cap is allotted totally for EU 007 or EU 011, assuming that only one recovery boiler is operating.

The modeling utilized five years (2008–2012) of meteorological data from the NWS site in Jacksonville, Florida, as processed through AERMET, AERMINTE and AERSURFACE. This procedure was used since this site represented the nearest site with complete data.

Table 3 shows that the maximum 1-hour average across all five years of meteorological data (2008–2012) is less than or equal to the 2010 SO_2 NAAQS of 75 ppb for all three sets of AERMOD modeling runs. For more details, see Florida's April 3, 2015 SIP submittal.

TABLE 3—MAXIMUM MODELED SO_2 IMPACTS IN THE NASSAU AREA, MICROGRAMS PER CUBIC METER (ppb)[13]

Model scenario	Averaging time	Maximum predicted impact		Background	Total	SO_2 NAAQS
		Rayonier	WestRock			
Pre-modification	1-hour	[14] 0.0	2957.80 (1128)	4.19 (1.6)	2961.99 (1130)	196. 4 (75)
Equal Cap Distribution	1-hour	114.45 (43.7)	67.69 (25.8)	10.72 (4.09)	192.87 (73.6)	
Entire Cap—EU 007	1-hour	110.93 (42.3)	71.56 (27.3)	9.16 (3.5)	191.65 (73.1)	
Entire Cap—EU 011	1-hour	117.51 (44.8)	63.79 (24.3)	12.82 (4.9)	194.11 (74.0)	

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[11] FL DEP is following the SO_2 Nonattainment Guidance on procedures for establishing emissions limits with averaging periods longer than 1 hour.

[12] The hourly emission rate that the model predicts would result in the 5-year average of the annual 99th percentile of daily maximum hourly SO_2 concentrations at the level of the NAAQS.

The pre-controlanalysis resultedin a predicted impact of 1130 ppb. The post-control analysis resulted in a worst-case predicted impact of 74.0 ppb. EPA is preliminarily determining that this data indicates sufficient reductions in air quality impact with the future implementation of the post-construction control plan for the Rayonier and WestRock facilities. Furthermore, EPA is preliminarily concluding that this data also supports FL DEP's analysis that the controls for Rayonier represent RACM and RACT for the SIP. The control strategy for Rayonier, as reflected in its Air Permit No. 0890004–036–AC, includes increasing a stack height for Rayonier EU 005, a vent scrubber, from 110 feet (ft) to at least 165 ft, and plans to extend another stack at a power boiler (Rayonier EU 022) if needed;[15] and lowering the allowable SO_2 emissions for the power boiler (Rayonier EU 006), recovery boiler (Rayonier EU 022), and vent gas scrubber system (Rayonier EU 005). The result of increasing a stack height is that the plume has a better opportunity for greater dispersion across an area, minimizing stagnation and local impacts from higher concentrations, primarily due to the avoidance of building downwash effects.[16] Rayonier's allowable SO_2 emissions (total from all three controlled units) will be reduced from 836.5 lb/hr to 502.3 lb/hr representing a 40 percent emission decrease. The state issued a revised title V permit (No. 0890004–042–AV) to incorporate the Rayonier Permit and authorize Rayonier to operate in accordance with those conditions.

The control strategy for WestRock, as reflected in its Air Permit No. 0890003–046–AC, includes the following operational changes to the four largest SO_2-emitting units: Improved combustion at WestRock EUs 007 and 011, the two recovery boilers, and emissions limits on WestRock EUs 006, 015, 007 and 011, the two power boilers and two recovery boilers. Florida will incorporate the new physical and operational changes for WestRock into its title V permit upon renewal. The title V permit is scheduled to be renewed by March 17, 2017. WestRock's allowable SO_2 emissions from WestRock EU 006, the power boiler No. 5, will be reduced from 550 lb/hr to 15 lb/hr representing a 97 percent emission decrease. The modeling results included in Table 3 prove that WestRock should be included in the considerations of controls for the following reasons: (1) If both facilities were left uncontrolled, as presented in the first modeled scenario, WestRock would have the greater impact on the area of maximum concentration within the Nassau Area; and (2) with the worst possible post-control modeling scenario, 35 percent of the total predicted impact on the Nassau Area would stem from WestRock. Therefore, if no controls were implemented at WestRock, the Area would not likely attain and maintain the 2010 SO_2 NAAQS. All emissions limits and related compliance parameters have been proposed for incorporation into the SIP to make these changes federally enforceable. More details on the pre- and post-construction operations at the facilities are included in the Florida SIP submission. FL DEP asserts that the proposed control strategy significantly lowers the modeled SO_2 impacts from the WestRock facility and is sufficient for the Nassau Area to attain 2010 SO_2 NAAQS.

EPA has reviewed the modeling that Florida submitted to support the attainment demonstration for the Nassau Area and has preliminarily determined that this modeling is consistent with CAA requirements, Appendix W and EPA's guidance for SO_2 attainment demonstration modeling.

D. RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provides for the implementation of all reasonably available control measures as expeditiously as practicable and attainment of the NAAQS. EPA interprets RACM, including RACT, under section 172, as measures that a state determines to be both reasonably available and contribute to attainment as expeditiously as practicable "for existing sources in the area."

Florida's analysis is found in Section 3 of the FL DEP attainment demonstration within the April 3, 2015, SIP submittal. The State determined that controls for SO_2 emissions at Rayonier are appropriate in the Nassau Area for purposes of attaining the 2010 SO_2 NAAQS. Florida only completed a RACM/RACT analysis for Rayonier since it is the only such point source within the boundaries of the nonattainment area. FL DEP included WestRock in its attainment and impact modeling because of the source's proximity to the Nassau Area (within 5 km) and its likelihood of contributing to violations of the SO_2 NAAQS within the area. In a modeling-based attainment demonstration, the means of considering impacts of sources outside the nonattainment area would depend on whether the sources cause significant concentration gradients. Florida proposed a control strategy for the WestRock facility, but does not assert that those controls constitute "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility"[17] because section 172(c)(1) provides for the implementation of RACT for existing sources in the area. However, an analysis of attainment needs to consider all potential sources, both inside and outside the nonattainment area that could reasonably cause or contribute to violations of the NAAQS within the area. FL DEP affirms the implementation of controls at WestRock significantly lowers the modeled SO_2 impact from the facility and is sufficient to attain 2010 SO_2 NAAQS in the Nassau Area. The control measures at both sources are summarized later on in this preamble.

On April 12, 2012, FL DEP issued construction Air Permit No. 0890004–036–AC to Rayonier for additional proposed control measures to reduce SO_2 emissions. The specified limits and conditions from this construction permit, adopted into the title V operating permit on May 30, 2014, reflecting RACT controls, are included

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[13] The April 3, 2015, final submittal contained typographical errors in its summary modeling table. On April 8, 2016, FL DEP provided EPA Region 4 with corrected numbers. FL DEP in no way revised the modeling demonstration nor the results inherent in the April 3, 2015, submittal. The correspondence and clarifying information is provided in the Docket for this proposed action.

[14] The "0" impact from Rayonier indicates that the worst case scenario was at a time when WestRock was impacting the area of maximum concentration because the wind was coming from the direction of WestRock. Rayonier impacts other receptors in the nonattainment area and may impact this same receptor at other times, as can be seen with the remainder of the modeling demonstration.

[15] The final stack height for the vent gas scrubber system (Rayonier EU 005) is 180 ft. The construction permit contained options for the power boiler (Rayonier EU 022) to meet a moderately lower emission limit paired with an increased stack height, or an even lower emission limit on the unit and maintaining the existing stack height. The stack height for EU 022 was not increased, as Rayonier selected the lower emission limit option.

[16] See EPA's June 1985 guidance document, "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations)," which can be found at: *http://www3.epa.gov/scram001/guidance/guide/gep.pdf.*

[17] Strelow, Roger. "Guidance for Determining the Acceptability of SIP Regulations in Non-Attainment Areas." Memo to Regional Administrators. Office of Air and Waste Management, Environmental Protection Agency. Washington, DC December 9, 1976. Located at: *http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf.*

in the April 3, 2015, SIP submittal for incorporation into the SIP. In accordance with the schedule in the permit, Rayonier was required to implement the controls on or before December 31, 2014. FL DEP reported in its SIP submittal that as of the second quarter of 2014, Rayonier has completed implementation of the RACT controls listed in the permit and summarized in Table 4:

TABLE 4—SUMMARY OF RACT CONTROLS FOR RAYONIER [18]

Description of measure	Explanation
Rayonier EU 005: The vent gas scrubber system at this unit undergoes construction to increase the stack height and an operational change to meet an enforceable emission limit.	Rayonier was authorized to construct a new stack for the vent gas scrubber system, increasing the stack height from the existing level of 110 ft to at least 165 ft. The as-built stack height is 180 ft. Rayonier has a new emission limitation, lowering the allowable SO_2 from 250 parts per million (ppm) to 100 ppm as a 3-hour rolling average.[19] This emission limit was incorporated into the title V operating permit and is proposed for incorporation into the SIP.
Rayonier EU 006: The recovery boiler undergoes an operational change to meet an enforceable emission limit.	Rayonier has a new emission limitation, lowering the allowable SO_2 from 300 parts per million by volume, dry basis (ppmvd) to 250 ppmvd as a 3-hour rolling average. This emission limit was incorporated into the title V operating permit and is proposed for incorporation into the SIP.
Rayonier EU 022: The power boiler undergoes an operational change to meet an enforceable emission limit.	Rayonier has a new emission limitation of 180 lb/hour SO_2 as a 3-hour rolling average.[20] This emission limit was incorporated into the title V operating permit and is proposed for incorporation into the SIP.

On January 9, 2015, construction Air Permit No. 0890003–046–AC was issued to WestRock for additional proposed control measures to reduce SO_2 emissions. The specified limits and conditions from this construction permit are to be adopted into the title V operating permit upon renewal, and are intended to supplement the RACT adopted for Rayonier in the Nassau Area to help with attainment and maintenance of the 2010 SO_2 NAAQS. These controls are included in the April 3, 2015, SIP submittal for incorporation into the SIP. The SO_2 Nonattainment Guidance discusses an anticipated control compliance date of January 1, 2017. Areas that implement attainment plan control strategies by this date are expected to be able to show a year of quality-assured air monitoring data showing attainment of the NAAQS and a year of compliance information, which when modeled, would also show attainment of the NAAQS. In accordance with the schedule in the construction permit, WestRock is required to implement the controls on or before January 1, 2018. This date, though later than the date suggested in the SO_2 Nonattainment Guidance, provides for 9 months of compliance information by the October 4, 2018 attainment date, including a semiannual compliance report in July 2018. Additionally, the Nassau Area is currently showing an attaining design value for 2013–2015, which means that attainment of the NAAQS is as expeditious as practicable. The supplemental control measures at WestRock are summarized in Table 4:

TABLE 4—SUMMARY OF SUPPLEMENTAL CONTROL MEASURES FOR WESTROCK

Description of measure	Explanation
WestRock EU 006:[21] The power boiler undergoes an operational change to meet an enforceable emission limit.	As of January 1, 2016, WestRock is required to comply with a 15.0 lb/hr emission limitation as a 3-hour block average for SO_2, except during times when this unit is operated as a back-up control device for NCGs. By December 1, 2017, WestRock will have a lower emission limitation of 15.0 lb/hr SO_2 during all periods of operation as a 3-hour block average and the unit will no longer operate as a back-up control device for NCGs. This limit will be incorporated into the title V operating permit upon scheduled renewal and is proposed for incorporation into the SIP.
WestRock EU 015:[22] The power boiler undergoes an operational change to meet an enforceable emission limit.	As of January 31, 2016, WestRock is required to comply with an emission limitation of 1225.20 lb/hr SO_2 during all periods of operation as a 3-hour block average, determined via stack testing. By December 1, 2017, WestRock will show compliance with the 1225.20 lb/hr SO_2 emission limitation via newly installed CEMS. This limit will be incorporated into the title V operating permit upon scheduled renewal and is proposed for incorporation into the SIP.
WestRock EUs 007 and 011: The recovery boilers undergo operational changes to limit fuel oil use and meet individual and combined enforceable emissions limits.	By January 1, 2018, WestRock will only be allowed to use ultra-low sulfur diesel during periods of fuel oil usage. By this date, WestRock will have a new emission limitation of 150.0 lb/hr SO_2 for each independent recovery boiler during all periods of operation as a 3-hour block average. Compliance with the SO_2 emissions standard shall be demonstrated by data collected from a certified CEMS[23]. Alternatively, WestRock can comply with a collective emissions limit across the two recovery boilers of 300.0 lb/hr SO_2 as a 3-hour block average, as determined only by CEMS. The selected limit will be incorporated into the title V operating permit upon scheduled renewal and both options are proposed for incorporation into the SIP.

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[18] Information pulled from the April 3, 2015 submittal, in which the original construction permit is included. None of these changes authorize an increased production rate at the facility.

[19] See previous discussion on longer-term emission limits. For more information, see the April 3, 2015 submittal.

[20] Rayonier considered two emissions limits: 180 lb/hr SO_2 at the current stack height of 190 ft; or 250 lb/hr SO_2 if the stack height were increased to 210 ft. The final limit is 180 lb/hr as the stack height was not increased.

EPA is proposing to approve Florida's determination that the proposed controls for SO_2 emissions at Rayonier constitute RACM/RACT for that source in the Nassau Area based on the analysis described previously. Additionally, EPA proposes to approve Florida's determination that the supplemental control measures initiated at WestRock help to bring the area into attainment of the 2010 SO_2 NAAQS as expeditiously as practicable. Further, EPA determines that no further controls would be required at Rayonier, and that the proposed controls are sufficient for RACM/RACT purposes for the Nassau Area at this time. EPA, therefore, proposes to approve Florida's April 3, 2015, SIP submission as meeting the RACM/RACT requirements of the CAA. In addition, by approving the RACM/RACT for Rayonier, and the supplemental control measures for WestRock, for the purposes of Florida's attainment planning, the control measures outlined in Tables 3 and 4 will become permanent and enforceable SIP measures to meet the requirements of the CAA.

Based on FL DEP's modeling demonstration, the Nassau Area is projected to begin showing attaining monitoring values for the 2010 SO_2 NAAQS by the 2018 attainment date. Currently, monitored design values are complying with the 2010 SO_2 NAAQS. As noted previously, some of the control measures at WestRock will not be in place for a full year prior to the attainment date as recommended in the 2014 SO_2 Nonattainment Guidance; a recommendation intended to provide data to evaluate the effect of the control strategy on air quality. Because the Area is currently attaining the 2010 SO_2 NAAQS, EPA proposes to find that the full control strategy will be in place for an adequate time prior to the attainment date to ensure attainment of the NAAQS. Furthermore, FL DEP has already implemented RACT controls for sources within the Nassau Area, as the RACT project was completed at Rayonier in 2014, long before the suggested 2017 date.

E. RFP Plan

Section 172(c)(2) of the CAA requires that an attainment plan includes a demonstration that shows reasonable further progress for meeting air quality standards will be achieved through generally linear incremental improvement in air quality. Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." As stated originally in the 1994 SO_2 Guideline Document[24] and repeated in the 2014 SO_2 Nonattainment Guidance, EPA continues to believe that this definition is most appropriate for pollutants that are emitted from numerous and diverse sources, where the relationship between particular sources and ambient air quality are not directly quantified. In such cases, emissions reductions may be required from various types and locations of sources. The relationship between SO_2 and sources is much more defined, and usually there is a single step between pre-control nonattainment and post-control attainment. Therefore, EPA interpreted RFP for SO_2 as adherence to an ambitious compliance schedule in both the 1994 SO_2 Guideline Document and the 2014 SO_2 Nonattainment Guidance. The control measures for attainment of the 2010 SO_2 NAAQS included in the State's submittal have been modeled to achieve attainment of the NAAQS. The permits and the adoption of specific emissions limits and compliance parameters require these control measures and resulting emissions reductions to be achieved as expeditiously as practicable. As a result of an ambitious compliance schedule, projected to yield a sufficient reduction in SO_2 emissions from the Rayonier and WestRock facilities, and resulting in modeled attainment of the SO_2 NAAQS, EPA has preliminarily determined that FL DEP's SO_2 attainment plan for the 2010 SO_2 NAAQS fulfills the RFP requirements for the Nassau Area. Furthermore, currently the monitored SO_2 design value for the Nassau Area is below the NAAQS, and because of the modeled attainment with the selected control strategies, EPA does not anticipate future nonattainment, or that the Area will not meet the statutory October 4, 2018, attainment date. EPA therefore proposes to approve Florida's attainment plan with respect to the RFP requirements.

F. Contingency Measures

In accordance with section 172(c)(9) of the CAA, contingency measures are required as additional measures to be implemented in the event that an area fails to meet the RFP requirements or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP requirements or fails to meet its attainment date and should contain trigger mechanisms and an implementation schedule. However, SO_2 presents special considerations. As stated in the final 2010 SO_2 NAAQS promulgation on June 22, 2010 (75 FR 35520) and in the 2014 SO_2 Nonattainment Guidance, EPA concluded that because of the quantifiable relationship between SO_2 sources and control measures, it is appropriate that state agencies develop a "comprehensive program to identify sources of violations of the SO_2 NAAQS and undertake an aggressive follow-up for compliance and enforcement."

Based on all the control measures that are completed for Rayonier and planned for WestRock, FL DEP believes that the 2010 SO_2 NAAQS can be achieved on a consistent basis. However, if a fourth exceedance of the SO_2 NAAQS occurs during any calendar year, or upon a determination that the Nassau Area has failed to attain the NAAQS by the attainment date, Rayonier and WestRock will immediately undertake full system audits of controlled SO_2 emissions. Within 10 days, each source will independently submit a report to FL DEP summarizing all operating parameters for four 10-day periods up to and including the dates of the exceedances. These sources are required to deploy provisional SO_2 emission control strategies within this 10-day period and include "evidence that these control strategies have been deployed, as appropriate" in the report to FL DEP. FL DEP will then begin a 30-day evaluation of these reports to determine the cause of the exceedances, followed by a 30-day consultation period with the sources to develop and implement

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[21] Additional controls not requested for incorporation into the SIP for WestRock EU 006 include the elimination of fuel oil usage as of January 31, 2016, and the elimination of operation as a back-up control for NCGs. The latter is not a direct control measure for SO_2, but means that the power boiler will not fire recovered process vapors.

[22] An additional control not requested for incorporation into the SIP for WestRock EU 015 is the installation of a white liquor scrubber system upstream to remove total reduced sulfur from the incoming NCG stream. WestRock EU 015 operates as a back-up control device for NCGs is not part of the SO_2 attainment strategy, but compliance with 40 CFR 63, Subpart S. The addition of the scrubber system is to prevent any additional sulfur load to the power boiler. WestRock EU 015 will be required to comply with the SIP emission limit regardless of how it is used with respect to the control of NCGs.

[23] FL DEP also acknowledges that parametric methods other than CEMS may be considered, subject to approval, to demonstrate compliance with the individual boiler emission limit of 150 lb/hr SO_2 limit.

[24] SO_2 Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, EPA–452/R–94–008, February 1994. Located at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

appropriate operational changes needed to expeditiously to prevent any future violation of the NAAQS. Explicit measures addressed in Florida's April 3, 2015, SIP submittal are:

- Fuel switching to reduce or eliminate the use of sulfur-containing fuels;
- combustion air system enhancement;
- vent gas scrubber enhancement;
- white liquor scrubber enhancement; and/or
- physical or operational reduction of production capacity.

Florida may consider other options for additional controls if these measures are not deemed to be the most appropriate to address air quality issues in the Area.

Florida would implement the most appropriate control strategy to address the exceedances. If a permit modification might be required to conform to applicable air quality standards, Florida will make use of the State's authority in Rule 62–4.080, F.A.C. to require permittees to comply with new or additional conditions. This authority would allow Florida to work directly with the source(s) expeditiously to make changes to permits. Subsequently, Florida would submit any relevant permit change to EPA as a source-specific SIP revision to make the change permanent and enforceable. EPA recognizes this strategy as an acceptable additional step, but according to CAA section 172(c)(9), a measure requiring further action by FL DEP or EPA (*e.g.,* necessitating a revised permit and SIP revision) could not serve as the primary contingency measure.

EPA is proposing to find that Florida's April 3, 2015, SIP submittal includes a comprehensive program to expeditiously identify the source of any violation of the SO_2 NAAQS and for aggressive follow-up. Therefore, EPA proposes that the contingency measures submitted by Florida follow the 2014 SO_2 Nonattainment Guidance and meet the section 172(c)(9) . EPA notes that Florida has further committed to pursue additional actions that may require a SIP revision if needed to address the exceedances.

G. Attainment Date

Florida's modeling indicates that the Nassau Area will begin attaining the 2010 SO_2 NAAQS by January 1, 2018, once the control strategy is completely implemented. This modeling does not provide for an attaining three-year design value by the proposed attainment date of October 4, 2018. However, expeditious implementation of RACM/RACT for the Rayonier source, coupled with actual emissions from the WestRock source, has already provided for an attaining design value of 58 ppb considering 2013–2015 data, and in fact exhibited attaining data since 2011–2013 with a design value of 70 ppb.[25] The recent design value is well under the NAAQS, and the ongoing compliance schedule for WestRock control measures will help to assure that the area maintains the NAAQS in the future. Therefore, the area is expected to attain the NAAQS by the attainment date.

V. Proposed Action

EPA is proposing to approve Florida's SO_2 attainment plan for the Nassau Area. EPA has preliminarily determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is proposing to approve Florida's April 3, 2015, SIP submission, which includes the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Nassau Area. Additionally, EPA is proposing to approve into the Florida SIP specific SO_2 emission limits and compliance parameters established for the two SO_2 point sources impacting the Nassau Area.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20119 Filed 8–22–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0425; FRL–9951–15–Region 4]

Air Plan Approval; GA; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

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[25] The most recent quality-assured design values for each NAAQS are publicly available at *https://www.epa.gov/air-trends/air-quality-design-values.*

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources (DNR), Environmental Protection Division (EPD), on December 14, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. EPD certified that the Georgia SIP contains provisions to ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Georgia. EPA is proposing to determine that portions of Georgia's infrastructure submission, submitted to EPA on December 14, 2015, satisfy certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0425 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of Georgia's $PM_{2.5}$ infrastructure SIP submissions[2] for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of Georgia's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that Georgia's already approved SIP meets certain CAA requirements.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements are summarized later on in this preamble and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[4]

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "State rules" or "State regulations" indicate that the cited regulation has been approved into Georgia's federally-approved SIP. The term "Georgia Air Quality Act" indicates cited Georgia State statutes, which are not a part of the SIP unless otherwise indicated.

[2] Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 14, 2015, is referred to as "Georgia's $PM_{2.5}$ infrastructure SIP" in this action.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Georgia that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[6] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[7] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[8] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[9] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[10]

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[5] As mentioned previously, this element is not relevant to this proposed rulemaking.

[6] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[7] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[9] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[11]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and is thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[12] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[14] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

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[10] For example, on December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[12] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[13] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[14] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)" to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[15] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[18]

IV. What is EPA's analysis of how Georgia addressed the elements of sections 110(a)(1) and (2) "infrastructure" provisions?

The Georgia 2012 Annual $PM_{2.5}$ infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

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[15] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[16] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[17] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Georgia's SIP are relevant to air quality control regulations. The following State regulations include enforceable emission limitations and other control measures: 391–3–1–.01, "Definitions. Amended.", 391–3–1–.02, "Provisions. Amended.", and 391–3–1–.03, "Permits. Amended." These regulations collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to $PM_{2.5}$ concentrations in the ambient air, and provide authority for EPD to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these State rules are adequate to satisfy section 110(a)(2)(A) for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Georgia's authority to monitor ambient air quality is found in the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(13)). Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On June 15, 2015, EPA received Georgia's plan for FY 2016. On October 13, 2015, EPA approved Georgia's monitoring network plan. Georgia's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0425. This State statute, along with Georgia's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. EPD states that no specific statutory or regulatory authority is necessary for EPD to authorize data analysis or the submission of such data to EPA, or to provide data submissions in response to federal regulations. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

Enforcement: Georgia's Enforcement Program covers mobile and stationary sources, consumer products, and fuels. The enforcement requirements are met through two Georgia Rules for Air Quality: 391–3–1–.07—"Inspections and Investigations. Amended." and 391–3–1–.09—"Enforcement. Amended." Georgia also cites to enforcement authority found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–13) in its submittal. Collectively, these regulations and State statute provide for enforcement of $PM_{2.5}$ emission limits and control measures.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission. The following Georgia Rules for Air Quality collectively establish a preconstruction, new source permitting program in the State that meets the PSD requirements of the CAA for $PM_{2.5}$ emissions sources: 391–3–1–.02.—"Provisions. Amended," which includes PSD requirements under 391–3–1–.02(7), and 391–3–1–.03.—"Permits. Amended," which includes NNSR requirements under 391–3–l–.03(8)(c) and (g). Georgia's infrastructure SIP demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21]

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[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[21] For more information on the structural PSD program requirements that are relevant to EPA's review of infrastructure SIPs in connection with the current PSD-related infrastructure SIP

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Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. Georgia's SIP approved Air Quality Control Rule 391–3–1–.03(1)—"Construction (SIP) Permit." governs the preconstruction permitting of modifications, construction of minor stationary sources, and minor modifications of major stationary sources. EPA has made the preliminary determination that Georgia's SIP is adequate for program enforcement of control measures, PSD permitting for major sources, and regulation of new minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action related to the provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2") of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) to a NNSR program. As discussed in more detail previously under section 110(a)(2)(C), Georgia's SIP contains provisions for the State's PSD program that reflects the required structural PSD requirements to satisfy the requirement of prong 3 of section 110(a)(2)(D)(i)(II). Georgia addresses prong 3 through rules 391–3–1–.02.—"Provisions. Amended," and 391–3–1–.03.—"Permits. Amended," which include the PSD and NNSR requirements, respectively. EPA has made the preliminary determination that Georgia's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider this requirement in relation to Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. The following two Georgia Rules for Air Quality provide Georgia the authority to conduct certain actions in support of this infrastructure element: 391–3–1–.02(7) for the State's PSD regulation and 391–3–1–.03 for the State's permitting regulations. As described previously, Georgia Rules for Air Quality 391–3–1–.02.—"Provisions. Amended," and 391–3–1–.03.—"Permits. Amended," collectively require any new major source or major modification to undergo PSD or nonattainment new source review (NNSR) permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies.

Additionally, Georgia does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA's analysis of sub-elements 110(a)(2)(E)(i), (ii), and (iii) is described below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), Georgia's infrastructure SIP demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. In its SIP submittal, Georgia describes its authority for section 110(a)(2)(E)(i) as the CAA section 105 grant process, the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10), and Georgia Rule for Air Quality 391–3–1–.03(9) which establishes Georgia's Air Permit Fee System. For section 110(a)(2)(E)(iii), the State does not rely on localities in Georgia for specific SIP implementation. As evidence of the adequacy of EPD's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Georgia on April 19, 2016, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to EPD can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0425. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, EPD's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are evaluated when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal includes information addressing the adequacy of personnel, funding, and legal authority under state law used to carry out the state's implementation plan and related

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requirements, see the technical support document in the docket for this rulemaking.

issues. Georgia's authority is included in all prehearing and final SIP submittal packages for approval by EPA. EPD is responsible for submitting all revisions to the Georgia SIP to EPA for approval. EPA has made the preliminary determination that Georgia has adequate resources for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. With respect to the requirements of section 110(a)(2)(E)(ii) pertaining the state board requirements of CAA section 128, Georgia's infrastructure SIP submission cites Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5) *Powers and duties of Board of Natural Resources as to air quality generally*) which provides the powers and duties of the Board of Natural Resources as to air quality and provides that at least a majority of members of this board represent the public interest and not derive any significant portion of income from persons subject to permits or enforcement orders and that potential conflicts of interest will be adequately disclosed. This provision has been incorporated into the federally-approved SIP.

EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve Georgia's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. Georgia's SIP submission identifies how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. These data are used to compare against current emission limits and to meet requirements of EPA's Air Emissions Reporting Rule (AERR). The following State rules enable Georgia to meet the requirements of this element: Georgia Rule for Air Quality 391–3–1–.02(3)—"Sampling.";[22] 391–3–1–.02(6)(b)—"Source Monitoring."; 391–3–1–.02(7)—"Prevention of Significant Deterioration of Air Quality."; 391–3–1–.02(8)—"New Source Performance Standards."; 391–3–1–.02(9)—"Emission Standards for Hazardous Air Pollutants."; 391–3–1–.02(11)—"Compliance Assurance Monitoring."; and 391–3–1–.03—"Permits. Amended." Also, the Georgia Air Quality Act Article I: Air Quality (O.C.G.A. 12–9–5(b)(6)) provides the State with the authority to conduct actions regarding stationary source emissions monitoring and reporting in support of this infrastructure element. These rules collectively require emissions monitoring and reporting for activities that contribute to $PM_{2.5}$ concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, and provide authority for EPD to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of 2012 Annual $PM_{2.5}$ emissions.

Additionally, Georgia is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the AERR on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Georgia made its latest update to the 2011 NEI on December 12, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(F).

Georgia Rule for Air Quality 391–3–1–.02(3), "Sampling,"[23] specifically, in "Procedures for Testing and Monitoring Sources of Air Pollutants" under *Compliance with Standards and Maintenance Requirements* allows the use of all available information to determine compliance, and EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.[24] EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Georgia's infrastructure SIP submission cites air pollution emergency episodes and preplanned abatement strategies in the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. Sections 12–9–2 *Declaration of public policy,* 12–9–6 *Powers and duties of director as to air quality generally,* 12–9–12 *Injunctive relief,* 12–9–13 *Proceedings for enforcement,* and 12–9–14 *Powers of director in situations involving imminent and substantial danger to public health*), and Rule 391–3–1-.04 "Air Pollution Episodes." O.C.G.A. Section 12–9–2 provides "[i]t is declared to be the public policy of the state of Georgia to preserve, protect, and improve air quality . . . to attain and

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[22] Georgia Rule for Air Quality 391–3–1–.02(3)—"Sampling." is not approved into Georgia's federally-approved SIP.

[23] Georgia Rule for Air Quality 391–3–1–.02(3)—"Sampling." is not approved into Georgia's federally-approved SIP.

[24] "*Credible Evidence,*" makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification, and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

maintain ambient air quality standards so as to safeguard the public health, safety, and welfare.'' O.C.G.A. Section 12–9–6(b)(10) provides the Director of EPD authority to ''issue orders as may be necessary to enforce compliance with [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)] and all rules and regulations of this article.'' O.C.G.A. Section 12–9–12 provides that ''[w]henever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)], he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with this article. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy of law.'' O.C.G.A. Section 12–19–13 specifically pertains to enforcement proceedings when the Director of EPD has reason to believe that a violation of any provision of the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A), or environmental rules, regulations or orders have occurred. O.C.G.A. Section 12–9–14 also provides that the Governor may issue orders as necessary to protect the health of persons who are, or may be, affected by a pollution source or facility after ''consult[ation] with local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking.''

Rule 391–3–1–.04 ''Air Pollution Episodes'' provides that the Director of EPD ''will proclaim that an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency exists when the meteorological conditions are such that an air stagnation condition is in existence and/or the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons in the specific area affected.'' Collectively the cited provisions provide that Georgia demonstrates authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority in the State. EPA has made the preliminary determination that Georgia's SIP, and State laws are adequate for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. EPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Georgia. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Initially, eight areas in Georgia were designated deferred for the 2012 Annual $PM_{2.5}$ NAAQS. *See* 80 FR 2205 (January 15, 2015). As of March 31, 2015, five areas in Georgia were designated unclassifiable/attainment. *See* 80 FR 18535 (April 7, 2015). Currently, based on early quality-assured, certified air quality monitoring data for 2013–2015, it appears that the remaining areas are attaining the 2012 Annual $PM_{2.5}$ NAAQS.

The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(12) and 12–9–6(b)(13)) provide Georgia the authority to conduct certain actions in support of this infrastructure element. Section 12–9–6(b)(12) of the Georgia Air Quality Act requires EPD to submit SIP revisions whenever revised air quality standards are promulgated by EPA. EPA has made the preliminary determination that Georgia adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation With Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. The following State rules and statutes, as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities: Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5(b)(17)); Georgia Administrative Procedures Act (O.C.G.A. § 50–13–4); and Georgia Rule 391–3–1–.02(7) as it relates to Class I areas. Section 12–9–5(b)(17) of the Georgia Air Quality Act states that the DNR Board is to ''establish satisfactory processes of consultation and cooperation with local governments or other designated organizations of elected officials or federal agencies for the purpose of planning, implementing, and determining requirements under this article to the extent required by the federal act.''

Additionally, Georgia adopted statewide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development.[25] Required partners covered by Georgia's consultation procedures include federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): EPD has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. EPD's Ambient Monitoring Web page (*www.georgiaair.org/amp*) provides information regarding current and historical air quality across the State. Daily air quality forecasts may be disseminated to the public in Atlanta through the Georgia Department of Transportation's electronic billboards. In its SIP submission, Georgia also notes that the non-profit organization in Georgia, "Clean Air Campaign," disseminates statewide air quality information and ways to reduce air pollution. Georgia rule 391–3–1–.04 "Air Pollution Episodes" enables the State to conduct certain actions in support of this infrastructure element. In addition, the following State statutes provide Georgia the authority to make public declarations about air pollution episodes in support of this infrastructure element. OCGA 12–9–6(b)(8) provides authority to the Georgia Board of Natural Resources "To collect and disseminate information and to provide for public notification in matters relating to air quality . . .". EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

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[25] Georgia rule 391–3–1–.15, *Georgia Transportation Conformity and Consultation Interagency Rule,* is approved into the State's SIP. *See* 77 FR 35866.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that it has a SIP-approved PSD program meeting all the current structural requirements of part C of title I of the CAA for all regulated NSR pollutants. As discussed in more detail previously in this preamble under section 110(a)(2)(C), Georgia's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the 2012 Annual $PM_{2.5}$ NAAQS for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Georgia's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(13)) provides EPD the authority to conduct modeling actions and to submit air quality modeling data to EPA in support of this element. EPD maintains personnel with training and experience to conduct source-oriented dispersion modeling with models such as AERMOD that would likely be used for modeling $PM_{2.5}$ emissions from sources. The State also notes that its SIP-approved PSD program, which includes specific (dispersion) modeling provisions, provides further support of Georgia's ability to address this element. All such modeling is conducted in accordance with the provisions of 40 CFR part 51, Appendix W, "Guideline on Air Quality Models."

Additionally, Georgia supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, Georgia's air quality regulations and practices demonstrate that Georgia has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Georgia's PSD and NNSR permitting programs are funded with title V fees. The Georgia Rule for Air Quality 391–3–1–.03(9) "Permit Fees." incorporates the EPA-approved title V fee program and fees for synthetic minor sources. Georgia's authority to mandate funding for processing PSD and NNSR permits is found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10). The State notes that these title V operating program fees cover the reasonable cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Georgia's SIP and practices adequately provide for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Consultation and participation by affected local entities is authorized by the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. 12–9–5(b)(17)) and the Georgia Rule for Air Quality 391–3–1–.15—"Transportation Conformity", which defines the consultation procedures for areas subject to transportation conformity. Furthermore, EPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and has worked with the FLMs as a requirement of the regional haze rule. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is proposing to approve Georgia's December 14, 2015, SIP submission, for the 2012 Annual $PM_{2.5}$ NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because the submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20139 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 402, 420, and, 455

[CMS–6074–NC]

RIN 0938–ZB31

Request for Information: Inappropriate Steering of Individuals Eligible for or Receiving Medicare and Medicaid Benefits to Individual Market Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This request for information seeks public comment regarding concerns about health care providers and provider-affiliated organizations steering people eligible for or receiving Medicare and/or Medicaid benefits to an individual market plan for the purpose of obtaining higher payment rates. CMS is concerned about reports of this practice and is requesting comments on the frequency and impact of this issue from the public. We believe this practice not only could raise overall health system costs, but could potentially be harmful to patient care and service coordination because of changes to provider networks and drug formularies, result in higher out-of-pocket costs for enrollees, and have a negative impact on the individual market single risk pool (or the combined risk pool in states that have chosen to merge their risk pools). We are seeking input from stakeholders and the public regarding the frequency and impact of this practice, and options to limit this practice.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 22, 2016.

ADDRESSES: In commenting, refer to file code CMS–6074–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*6074*–NC, P.O. Box 8010, Baltimore, MD 21244–*8010.*

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*6074*–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—
Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Morgan Burns, 301–492–4493.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

This is a request for information only. Respondents are encouraged to provide complete but concise responses to the questions listed in the sections outlined below. Please note that a response to every question is not required. This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal, applications, proposal abstracts, or quotations. This RFI does not commit the Government to contract for any supplies or services or make a grant award. Further, CMS is not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. Please note that CMS will not respond to questions about the policy issues raised in this RFI. CMS may or may not choose to contact individual responders. Such communications would only serve to further clarify written responses. Contractor support personnel may be used to review RFI responses. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become Government property and will not be returned. CMS may publically post the comments received, or a summary thereof.

I. Background

The Centers for Medicare & Medicaid Services (CMS) believes that when health care providers or provider-affiliated organizations steer or influence people eligible for or receiving Medicare and/or Medicaid benefits, it may not be in the best interests of the individual, it may have deleterious effects on the insurance market, including disruptions to the individual market risk pool, and it is likely to raise overall healthcare costs. Individuals eligible for Medicare and/or Medicaid benefits are not required to enroll in these programs.[1] However, individuals eligible for Medicaid or Medicare Part A benefits are generally ineligible for the premium tax credit (PTC), including advance payments thereof (APTC), and for cost-sharing reductions (CSR) for their Qualified Health Plan (QHP) coverage for the months they have access to minimum essential coverage (MEC) through the Medicare or Medicaid programs.[2]

We have heard anecdotal reports that individuals who are eligible for Medicare and/or Medicaid benefits are receiving premium and other cost-sharing assistance from a third party so that the individual can enroll in individual market plans for the provider's financial benefit. In some cases, a health care provider may estimate that the higher payment rate from an individual market plan compared to Medicare or Medicaid is sufficient to allow it to pay a patient's premiums and still financially gain from the higher reimbursement rates. Issuers are not required to accept such payments from health care providers or provider-affiliated organizations, as described below. Enrollment decisions should be made, without influence, by the individual based on their specific circumstances, and health and financial needs. CMS has established standards for enrollment assisters, including navigators, which prohibit gifts of any value as an inducement for enrollment, and require information and services to be provided in a fair, accurate, and impartial manner.[3] Additionally, CMS has established standards for insurance agents and brokers that register with the Federal Marketplace, including training about the interaction of Medicare and Medicaid eligibility with eligibility for individual market plans and financial assistance, and has remedies for insurance agents that provide inaccurate or incorrect information to consumers, such as misinformation about the impact of not enrolling in Medicare when an individual first becomes eligible, including termination of the Marketplace agreement, civil monetary penalties, and denial of right to enter agreements in future years.[4]

We believe there is potential for financial harm to a consumer when a health care provider or provider-affiliated organization (including a non-profit organization affiliated with the provider) steers people who could receive or are receiving benefits under Medicare and/or Medicaid to enroll in an individual market plan. The potential harm is particularly acute when the steering occurs for the financial gain of the health care provider through higher payment rates without taking into account the needs of these beneficiaries. People who are steered from Medicare and Medicaid to the individual market may also experience a disruption in the continuity and coordination of their care as a result of changes in access to their network of providers, changes in prescription drug benefits, and loss of dental care for certain Medicaid beneficiaries. If an individual receives the benefit of APTC for a month he or she is eligible for minimum essential coverage, the individual (or the person who claims the individual as a tax dependent) may be required to repay some or all of the APTC at the time such person files his or her federal income tax return. Moreover, it is unlawful to enroll an individual in individual market coverage if they are known to be entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or receiving Medicaid benefits. Importantly, those eligible for Medicare may be subject to late enrollment penalties if they do not enroll in Medicare when first eligible to do so—a monthly premium for Part B may go up 10 percent for each full 12-month period an individual could have had Part B, but did not sign up for it.[5] Individuals who become eligible for Medicare based on receipt of Social Security benefits based on age or Social Security Disability Insurance (SSDI) must forgo and if received repay their Social Security cash benefits if they wish to decline Medicare Part A benefits.[6] Additionally, individuals who are steered into an individual market plan for renal dialysis services and then have a kidney transplant while enrolled in the individual market plan will not be eligible for Medicare Part B coverage of their immunosuppressant drugs if they enroll in Medicare at a later date.[7]

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[1] Individuals eligible to receive premium free Medicare Part A benefits may not decline Medicare Part A entitlement if they accept Social Security benefits.

[2] See 26 U.S.C. 36B. In general, an individual who is eligible for minimum essential coverage (other than coverage in the individual market) for a month is ineligible for the premium tax credit for that month. Medicare part A and most Medicaid programs are minimum essential coverage. See 26 U.S.C. 5000A(f) and 26 CFR 1.5000A–2(b).

[3] 45 CFR 155.210.

[4] 45 CFR 155.220.

Federal regulations at 45 CFR 156.1250 require that issuers offering Qualified Health Plans (QHPs), including stand-alone dental plans, and their downstream entities, accept premium and cost-sharing payments on behalf of QHP enrollees from the following third-party entities (in the case of a downstream entity, to the extent the entity routinely collects premiums or cost sharing): (a) A Ryan White HIV/AIDS Program under title XXVI of the Public Health Service Act; (b) an Indian tribe, tribal organization, or urban Indian organization; and (c) a local, state, or Federal government program, including a grantee directed by a government program to make payments on its behalf.[8] Issuers are not required to accept such payments from other entities. These regulations were finalized in the 2017 HHS Notice of Benefit and Payment Parameters Final Rule, which made several amendments to the regulations previously codified through a March 19, 2014, HHS Interim final rule (IFR) with comment period titled, Patient Protection and Affordable Care Act; Third Party Payment of Qualified Health Plan Premiums (79 FR 15240).

Prior to publishing the IFR, HHS issued two "Frequently Asked Questions" (FAQ) documents regarding premium and cost-sharing payments made by third parties on behalf of individual market plan enrollees. In an FAQ issued on November 4, 2013 (the November FAQ), HHS discouraged QHP issuers from accepting third-party payments made on behalf of enrollees by hospitals, other health care providers, and other commercial entities due to concerns that such practices could skew the insurance risk pool and create an unlevel field in the Exchanges. The FAQ also noted that HHS intended to monitor this practice and to take appropriate action, if necessary.

On February 7, 2014, HHS issued another FAQ (the February FAQ) clarifying that the November FAQ did not apply to third party premium and cost-sharing payments made on behalf of enrollees by Indian tribes, tribal organizations, and urban Indian organizations; state and Federal government programs (such as the Ryan White HIV/AIDS Program); or private, not-for-profit foundations that base eligibility on financial status, do not consider enrollees' health status, and provide assistance for an entire year. In the February FAQ, HHS affirmatively encouraged QHP issuers to accept payments from Indian tribes, tribal organizations, and urban Indian organizations; and state and Federal government programs (such as the Ryan White HIV/AIDS Program) given that Federal or state law or policy specifically envisions third party payment of premium and cost-sharing amounts by these entities.

CMS seeks to clarify that offering premium and cost-sharing assistance in order to steer people eligible for or receiving Medicare and/or Medicaid benefits to individual market plans for a provider's financial gain is an inappropriate action that may have negative impacts on patients. CMS is strongly encouraging any provider or provider-affiliated organization that may be currently engaged in such a practice to end the practice. As noted above, enrollment decisions should be made based on an individual's particular financial and health needs.

As we assess the extent of potential steering activities, its impact on beneficiaries and enrollees and the individual market single risk pool, CMS reminds healthcare providers and other entities that may be engaged in such behavior that we have several regulatory and operational tools that we may use to discourage premium payments and routine waiver of cost-sharing for individual market plans by health care providers, including, but not limited to, revisions to Medicare and Medicaid provider conditions of participation and enrollment rules, and imposition of civil monetary penalties for individuals who failed to provide correct information to the Exchange when enrolling consumers into QHPs.[9] CMS is also working closely with federal, state and local law enforcement to investigate instances of potential fraud and abuse, as well as collaborating with private and public health plans on provider fraud in the Healthcare Fraud Prevention Partnership.[10] We are exploring ways to use our existing authorities to impose civil monetary penalties on health care providers when their actions result in late enrollment penalties for Medicare eligible individuals who were steered to an individual market plan and delayed Medicare enrollment.

II. Solicitation of Comments

We are seeking information from the public about circumstances in which steering into individual market plans may be taking place and the extent of such practices. We are particularly interested in transparency around the current practices providers may be using to enroll consumers in coverage. Our goal is to protect consumers from inappropriate health care provider behavior. People eligible for or receiving Medicare and/or Medicaid benefits should not be unduly influenced in their decisions about their health coverage options. We also seek to maintain continuity of care for these beneficiaries and ensure patient choice is the primary reason for any change in health coverage. We also want to ensure healthcare is being provided efficiently and affordably. Accordingly, to more fully understand the types of situations in which steering may occur as we develop regulatory or operational changes to address these problems, we request comments on the following:

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[5] *https://www.medicare.gov/your-medicare-costs/part-b-costs/penalty/part-b-late-enrollment-penalty.html.*

[6] *https://www.cms.gov/Outreach-and-Education/Find-Your-Provider-Type/Employers-and-Unions/Top-5-things-you-need-to-know-about-Medicare-Enrollment.html.*

[7] *https://www.medicare.gov/coverage/prescription-drugs-outpatient.html.*

[8] 2017 HHS Payment Notice Final Rule.

[9] 45 CFR 155.285 Bases and process for imposing civil penalties for provision of false or fraudulent information to an Exchange or improper use or disclosure of information.

[10] See *https://hfpp.cms.gov/* for more information.

- In what types of circumstances are healthcare providers or provider-affiliated organizations in a position to steer people to individual market plans? How, and to what extent, are health care providers actively engaged in such steering?
- What impact is there to the single risk pool and to rates when people enter the single risk pool who might not otherwise have been in the pool because they would normally be covered under another government program? Are issuers accounting for this uncertainty when they are setting rates?
- Are there examples of steering practices that specifically target people eligible for or receiving Medicare and/or Medicaid benefits to enroll in individual market plans? In what ways are people eligible for or receiving Medicare and/or Medicaid benefits particularly vulnerable to steering? To what extent, if any, are providers steering people eligible for or receiving Medicare and/or Medicaid to individual market plans because they are prohibited from billing the Medicare and Medicaid programs, through exclusion by the HHS Office of Inspector General, termination from State Medicaid plans or the revocation of Medicare billing privileges?
- Is the payment of premiums and cost-sharing commonly used to steer individuals to individual market plans, or are other methods leading to Medicare and Medicaid eligible individuals being enrolled in individual market plans? Specifically, how often are issuers receiving payments directly from health care providers and/or provider affiliated organizations? Are issuers capable of determining when third party payments are made directly to a beneficiary and then transferred to the issuer? What actions could CMS consider to add transparency to third party payments?
- How are enrollees impacted by the practice of a health care provider or provider-affiliated organizations enrolling an individual into an individual market plan and paying premiums for that individual market plan, when the individual was previously or concurrently receiving Medicare and/or Medicaid benefits? We are concerned about instances where individuals eligible for Medicare and/or Medicaid benefits may have been disadvantaged by unscrupulous practices aimed at increasing provider payments, including impacts to the enrollee's continuity of care. We would be interested in knowing more about these practices and the extent to which they may be more widespread or varied than we have identified.
- How are enrollees impacted by the practice of a health care provider enrolling an individual into an individual market plan and paying premiums for individual market plans, when the individual was eligible for Medicare and/or Medicaid, but not enrolled? We are particularly interested in information about how to measure negative impacts on beneficiaries and enrollees, and what data sources and measurement methodologies are available to assess the impact of this behavior described in this request for information on beneficiaries and enrollees. We are seeking information on any financial impacts that are in addition to Medicare late enrollment penalties. For example, differentials in copayments and deductibles paid by enrollees in individual market plans, Medicare or Medicaid, and the impact of individual market plan network limitations on the financial obligations of enrollees, such as increased copayments and deductibles where the enrollee's chosen provider is out-of-network to the individual market plan.
- What remedies could effectively deter health care providers or provider-affiliated organizations from steering people eligible for or enrolled in Medicare and/or Medicaid to individual market plans and paying premiums for the provider's financial gain? CMS is considering modifying regulations regarding civil monetary penalties and authority related to individual market plans.
- What steps do third party payers take to effectively screen for Medicare and/or Medicaid eligibility before offering premium assistance? What steps do these entities take to make sure that any such individuals understand the impact of signing up for an individual market plan if they are already eligible for or receiving Medicare and/or Medicaid benefits?
- For providers that offer premium assistance, who is interacting with beneficiaries to determine proper enrollment? What questions are asked of the consumer to determine eligibility pathways? How are consumers connected to foundations or others who are in the position to provide premium assistance? How are premiums paid by providers or foundations for consumers?
- We seek comment on policies prohibiting providers from making offers of premium assistance and routine cost-sharing waivers for individual market plans when a beneficiary is currently enrolled or could become enrolled in Medicare Part A and other adjustments to federal policy on premium assistance programs in the individual market to prevent negative impact to beneficiaries and the single risk pool.
- We seek comments on changes to Medicare and Medicaid provider enrollment requirements and conditions of participation that would potentially restrict the ability of health care providers to manipulate patient enrollment in various health plans for their own benefit. We are also interested in information on the extent steering is associated with other inappropriate behavior, such as billing for services not provided, or quality of care concerns. We seek comment on the advisability of such restrictions, as well as considerations of how such restrictions would affect health care providers and beneficiaries.
- We seek comment on policies to require Medicare and Medicaid-enrolled providers to report premium assistance and cost-sharing waivers for individual market enrollees to CMS or issuers.
- We seek comments on whether individual market plans considered limiting their payment to health care providers to Medicare-based amounts for particular services and items of care and on potential approaches that would allow individual market plans to limit their payment to health care providers to Medicare-based amounts for particular services and items of care.
- We seek comment on policies that would allow individual market plans to make retroactive payment adjustments to providers, when health care providers are found to have steered Medicare or Medicaid beneficiaries and enrollees to enroll in an individual market plan for the provider's financial gain.

III. Collection of Information Requirements

This request for information constitutes a general solicitation of public comments as stated in the implementing regulations of the Paperwork Reduction Act at 5 CFR 1320.3(h)(4). Therefore, this request for information does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 16, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–20034 Filed 8–18–16; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 81, No. 163
Tuesday, August 23, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest (NF) Resource Advisory Committee (RAC) will meet in Walker Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/chippewa.*

DATES: The meeting will be held on Wednesday, September 21, 2016, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at The Chase Resort, Lower Conference Room, 502 Cleveland Boulevard, Walker, Minnesota. The public is welcome to attend in person or via teleconference. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or contact Todd Tisler at *ttisler@fs.fed.us* for further details.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Chippewa NF Supervisor's Office, 200 Ash Avenue Northwest, Cass Lake, Minnesota. Please call ahead at 218–335–8629 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, RAC Coordinator by phone at 218–335–8629, or by email at *ttisler@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review the July meeting notes,
2. Receive testimony from the public,
3. Proposed RAC project application review and discussion, and
4. Discuss RAC project funding recommendations.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Todd Tisler, RAC Coordinator, Chippewa NF Supervisor's Office, 200 Ash Avenue Northwest, Cass Lake, Minnesota 56633; or by email to *ttisler@fs.fed.us,* or via facsimile to 218–335–8637.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2016.

Darla Lenz,

Forest Supervisor.

[FR Doc. 2016–20078 Filed 8–22–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue and Umpqua Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue and Umpqua Resource Advisory Committee (RAC) will meet in Roseburg, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://tinyurl.com/qjkrxps.*

DATES: The meeting will be held September 7 and 8, at 9:00 a.m. to 4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Umpqua National Forest Supervisor's Office, 2900 NW Stewart Parkway, Roseburg, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Umpqua National Forest Supervisor's Office.

FOR FURTHER INFORMATION CONTACT: Cheryl Caplan, RAC Coordinator, by phone at 541–957–3270 or via email at *ccaplan@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review projects proposals;
2. Make project recommendations for Title II funding; and
3. Review the status of projects previously funded by Title II monies.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 6, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Cheryl Caplan, RAC Coordinator, Umpqua National Forest Supervisor's Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97471; by email to *ccaplan@fs.fed.us,* or via facsimile to 541–957–3495.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 3, 2016.

Alice B. Carlton,

Umpqua Forest Supervisor.

[FR Doc. 2016–19355 Filed 8–22–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Submission for OMB Review; Comment Request

August 17, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 22, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation Defects.

OMB Control Number: 0575–0082.

Summary of Collection: Section 509C of title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to pay the costs for correcting defects or compensate borrowers of section 502 Direct loan funds for expenses arising out of defects with respect to newly constructed dwellings and new manufactured housing units with authorized funds. This regulation provides instruction to all RHS personnel to enable them to implement a procedure to accept and process complaints from borrowers/owners against builders and dealers/contractors, to resolve the complaint informally. When the complaint involves structural defects which cannot be resolved by the cooperation of the builder or dealer/contractor, it authorizes expenditure to resolve the defect with grant funds. Resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan.

Need and Use of the Information: The information is collected from agency borrowers and the local agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. Without this information, RHS would be unable to assure that eligible borrowers would receive compensation to repair defects to their newly constructed dwellings.

Description of Respondents: Business or for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Rural Housing Service

Title: Multi-Family Housing Preservation and Revitalization Restructuring Demonstration Program (MPR).

OMB Control Number: 0575–0190.

Summary of Collection: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) provides funding for, and authorizes the Rural Housing Service (RHS) to conduct a demonstration program for the preservation and revitalization of the Section 515 Multi-Family Housing portfolio. Section 515 of the Housing Act of 1949 provides Rural Development the authority to make loans for low-income Multi-Family Housing and related facilities.

The Consolidated Appropriations Act, 2016, (Pub. L. 114–113) authorized USDA to conduct a demonstration program for the preservation and revitalization of the sections 514, 515, and 516 multi-family rental housing properties to restructure existing USDA/Multi-Family Housing (MFH) loans to ensure the project has sufficient resources to provide safe and affordable housing for low-income residents and farm laborers.

Need and Use of the Information: RHS will collect information from the proposer to evaluate the strengths and weaknesses to which the proposal concept possesses or lacks to select the most feasible proposals that will enhances the Agency's chances in accomplishing the demonstration objective. The information will be utilized to sustain and modify RHS' current policies pertaining to revitalization and preservation of affordable rental housing in rural areas.

Description of Respondents: Individuals or Households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 1,500.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 27,365.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–20012 Filed 8–22–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[8/10/2016 through 8/18/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Drake Powderworks, LLC	1549 South, 1100 East, Salt Lake City, UT 84105.	8/17/2016	The firm is a manufacturer of snow skis, bindings, and related accessories.
DSA Operating Company, LLC.	1235 West Laurel Street, San Antonio, TX 78201.	8/17/2016	The firm is a manufacturer of precision machines, fittings and components.
Hill Equipment Manufacturing, Inc..	2333 W. Wichita, Broken Arrow, OK 74012.	8/17/2016	The firm is a manufacturer of proprietary parts for the oil industry and other firms.
National K Works, Inc.	1717 Brittmoore Road, Houston, TX 77043.	8/17/2016	The firm is an OEM manufacturer of precision machines, fittings and components.
Tedco, Inc.	70 Glen Road, Cranston, RI 02920.	8/17/2016	The firm is a manufacturer of precision custom components from both flat and wire stock processed for a variety of industries.
Tool Technology, Inc.	3 Ajootian Way, Building A, Middleton, MA 01949.	8/17/2016	The firm is a manufacturer of high quality, ultra-precision manufactured components and sub-assemblies.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: August 18, 2016.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–20133 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

First Responder Network Authority Board and Finance Committee Special Meeting

AGENCY: First Responder Network Authority (FirstNet), U.S. Department of Commerce.

ACTION: Notice of public meeting of the First Responder Network Authority Board.

SUMMARY: The Board of the First Responder Network Authority (Board) and the Board Finance Committee will hold a Special Meeting via telephone conference (teleconference) on August 26, 2016.

DATES: The Special Meeting of the Board and the Board Finance Committee of the First Responder Network Authority will be held on August 26, 2016 from 9:00 a.m. to 10:00 a.m. EDT.

ADDRESSES: The Special Meeting will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll free 1–800–369–1808 and using passcode 7322336.

FOR FURTHER INFORMATION CONTACT: Karen Miller-Kuwana, Board Secretary, FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (571) 665–6177; email: *Karen.Miller-Kuwana@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (571) 665–6186.

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (Act) established FirstNet as an independent authority within the National Telecommunications and Information Administration that is headed by a Board. The Act directs FirstNet to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters to be Considered: FirstNet will post a detailed agenda for the Special Meeting on its Web site, *http://www.firstnet.gov,* prior to the meeting.

The agenda topics are subject to change. Please note that the subjects that will be discussed by the Board Finance Committee and the Board may involve commercial or financial information that is privileged or confidential or other legal matters affecting FirstNet. As such, the Committee Chair and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Time and Date of Meeting: The Special Meeting of the Board and the Board Finance Committee of the First Responder Network Authority will be held on August 26, 2016 from 9:00 a.m. to 10:00 a.m. EDT. The time and date are subject to change. Please refer to FirstNet's Web site at *www.firstnet.gov* for the most up-to-date information.

Place: The Special Meeting will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll free 1–800–369–1808 and using passcode 7322336.

Other Information: These teleconference for the Special Meeting is open to the public. On the date and time of the Special Meeting, members of the public may call toll free 1–800–369–1808 and use passcode 7322336 to listen to the meeting. If you experience technical difficulty, please contact the Conferencing Center customer service at 1–866–900–1011. Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Ms. Miller-Kuwana by telephone (571) 665–6177 or email at *Karen.Miller-Kuwana@firstnet.gov* at least five (5) business days before the applicable meeting.

Records: FirstNet maintains records of all Board proceedings. Minutes of the Board Meeting and the Committee meetings will be available at *www.firstnet.gov.*

Dated: August 18, 2016.

Karen Miller-Kuwana,

Board Secretary, First Responder Network Authority.

[FR Doc. 2016–20123 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–78–2016]

Approval of Subzone Status; Next Level Apparel; Ashford, Alabama

On June 1, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Dothan-Houston County Foreign Trade Zone, Inc., grantee of FTZ 233, requesting subzone status subject to the existing activation limit of FTZ 233, on behalf of Next Level Apparel in Ashford, Alabama.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 37571, June 10, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 233A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 233's 1,451-acre activation limit.

Dated: August 18, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–20168 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–17–2016]

Foreign-Trade Zone (FTZ) 158—Vicksburg/Jackson, Mississippi; Authorization of Limited Production Activity; Max Home, LLC (Upholstered Furniture); Iuka and Fulton, Mississippi

On March 17, 2016, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, submitted a notification of proposed production activity to the FTZ Board on behalf of Max Home, LLC, within Subzone 158F, in Iuka and Fulton, Mississippi.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 20617–20618, April 8, 2016). The FTZ Board has determined that further review of part of the proposed activity is warranted at this time. The production activity described in the notification, including indefinite extension of production authority, is authorized on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that foreign status upholstery leather (HTSUS 4107.11, 4107.92 and 4107.99) be admitted to the subzone in privileged foreign status (19 CFR 146.41). The activity otherwise remains subject to the restrictions and conditions established under Board Order 1744.

Dated: August 16, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–20180 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Department) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on carbon butt-weld pipe fittings (BWPF) from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

DATES: Effective August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2016, the Department published the notice of initiation of the fourth sunset reviews of the antidumping duty orders on BWPF from Brazil, Japan, Taiwan, Thailand, and the PRC, pursuant to section 751(c) of the

Tariff Act of 1930, as amended (the Act).[1] As a result of its review, the Department determined that revocation of the AD orders would likely lead to a continuation or recurrence of dumping.[2] The Department, therefore, notified the ITC of the magnitude of the margins likely to prevail should the AD orders be revoked. On August 8, 2016, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the AD orders on BWPF from Brazil, Japan, Taiwan, Thailand, and the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

The merchandise covered by the orders consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished. These imports are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[4]

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD orders on BWPF from Brazil, Japan, Taiwan, Thailand, and the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–20174 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in an open session on Tuesday, October 18, 2016 from 8:30 a.m. to 3:30 p.m. Mountain Time and Wednesday, October 19, 2016 from 8:30 a.m. to 12:00 p.m. Mountain Time. The VCAT is composed of fifteen members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, October 18, 2016 from 8:30 a.m. to 3:30 p.m. Mountain Time and Wednesday, October 19, 2016 from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held in the Katharine Blodgett Gebbie Laboratory Conference Room, Room 81–1A106, at NIST, 325 Broadway Street, Boulder, Colorado 80305. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Serena Martinez, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2661. Mrs. Martinez's email address is *serena.martinez@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major NIST programs and a presentation reviewing safety trends at NIST. There will be presentations and discussion about the evolution of NIST's research and development agenda over the past eight years and how to prioritize NIST's research in the future, including a focused discussion on NIST's role in the Administration's National Strategic Computing Initiative. The agenda will also include discussions on the adequacy of NIST's research facilities and the importance of a collaborative research environment. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda.

On Wednesday, October 19, approximately one-half hour in the morning will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT,

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[1] *See Initiation of Five-Year ("Sunset") Reviews,* 81 FR 10578 (March 1, 2016).

[2] *See Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 81 FR 44270 (July 7, 2016) (*Final Results*).

[3] *See Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: Investigation Nos. 731–TA–308–310 and 520–521 (Fourth Review),* USITC Publication 4628 (August 2016); *see also Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand; Determination,* 81 FR 52460 (August 8, 2016).

[4] For a full description of the scope of the orders, *see* the *Final Results* and accompanying memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China," dated June 28, 2016. The scope language varies slightly amongst the countries due to the fact the investigations and subsequent orders for the PRC and Thailand occurred after the investigations for the other three countries. Additionally, the scope language for Taiwan includes a reference to a scope decision.

NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by email to *stephanie.shaw@nist.gov*.

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Serena Martinez by 5:00 p.m. Eastern Time, Tuesday, October 11, 2016. Non-U.S. citizens must submit additional information; please contact Mrs. Martinez. Mrs. Martinez's email address is *serena.martinez@nist.gov* and her phone number is 301–975–2661. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Mrs. Martinez at 301–975–2661 or visit: *http://nist.gov/public_affairs/visitor/*.

Kent Rochford,

Associate Director for Laboratory Programs.

[FR Doc. 2016–20121 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Genome in a Bottle Consortium—Progress and Planning Workshop

AGENCY: National Institute of Standards & Technology (NIST), Commerce.

ACTION: Notice of public workshop.

SUMMARY: NIST announces the Genome in a Bottle (GIAB) Consortium meeting to be held on Thursday and Friday, September 15 and 16, 2016. The Genome in a Bottle Consortium is developing the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable performance assessment of sequencing and science-based regulatory oversight of clinical sequencing. The purpose of this meeting is to update participants about progress of the consortium work, continue to get broad input from individual stakeholders to update or refine the consortium work plan, continue to broadly solicit consortium membership from interested stakeholders, and invite members to participate in work plan implementation. September 15 will be a new sample thinkshop to discuss new GIAB genomes in parallel with a data jamboree to develop high-confidence calls for difficult variants and difficult regions. September 16 will be the plenary session to present GIAB progress updates and emerging technical work.

DATES: The Genome in a Bottle Consortium meeting will be held on Thursday, September 15, 2016 from 9:00 a.m. to 5:30 p.m. Eastern Time and Friday, September 16, 2016 from 8:30 a.m. to 2:00 p.m. Eastern Time. Attendees must register by 5:00 p.m. Eastern Time on Thursday, September 8, 2016.

ADDRESSES: The meeting will be held in Lecture Room A, Lecture Room B, and the Green Auditorium, Building 101, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact Justin Zook by email at *jzook@nist.gov* or by phone at (301) 975–4133 or Marc Salit by email at *salit@nist.gov* or by phone at (650) 350–2338. To register, go to: *https://appam.certain.com/profile/form/index.cfm?PKformID=0x311041593*.

SUPPLEMENTARY INFORMATION: Clinical application of ultra-high throughput sequencing for hereditary genetic diseases and oncology is rapidly growing. At present, there are no widely accepted genomic standards or quantitative performance metrics for confidence in variant calling. These standards and quantitative performance metrics are needed to achieve the confidence in measurement results expected for sound, reproducible research and regulated applications in the clinic. On April 13, 2012, NIST convened the workshop "Genome in a Bottle" to initiate a consortium to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls (*www.genomeinabottle.org*). On August 16–17, 2012, NIST hosted the first large public meeting of the Genome in a Bottle Consortium, with about 100 participants from government, academic institutions, and industry. This meeting was announced in the **Federal Register** (77 FR 43237) on July 24, 2012. A principal motivation for this consortium is to enable science-based regulatory oversight of clinical sequencing.

At the August 2012 meeting, the consortium established work plans for four technical working groups with the following responsibilities:

(1) Reference Material (RM) Selection and Design: select appropriate sources for whole genome RMs and identify or design synthetic DNA constructs that could be spiked-in to samples for measurement assurance.

(2) Measurements for Reference Material Characterization: design and carry out experiments to characterize the RMs using multiple sequencing methods, other methods, and validation of selected variants using orthogonal technologies.

(3) Bioinformatics, Data Integration, and Data Representation: develop methods to analyze and integrate the data for each RM, as well as select appropriate formats to represent the data.

(4) Performance Metrics and Figures of Merit: develop useful performance metrics and figures of merit that can be obtained through measurement of the RMs.

The products of these technical working groups will be a set of well-characterized whole genome and synthetic DNA RMs along with the methods (documentary standards) and reference data necessary for use of the RMs. These products will be designed to help enable translation of whole genome sequencing to regulated clinical applications. The pilot NIST whole genome RM 8398 was released in May 2015 and is available at *http://tinyurl.com/giabpilot*. The consortium is currently analyzing and integrating data from two trios that are candidate NIST RMs. The consortium meets in workshops two times per year, in January at Stanford University in Palo Alto, CA, and in August at the National Institute of Standards and Technology in Gaithersburg, MD. At these workshops, including the last meetings at Stanford in January 2016 and at NIST in August 2015, participants in the consortium have discussed progress in developing well-characterized genomes for NIST Reference Materials and planned future experiments and analysis of these genomes (see *https://federalregister.gov/a/2012-18064, https://federalregister.gov/a/2013-18934, https://federalregister.gov/a/2014-18841, https://federalregister.gov/a/2015-01158,* and *https://www.federalregister.gov/articles/2016/01/05/2015-33140/genome-in-a-bottle-consortium-progress-and-planning-workshop* for announcements of past workshops at NIST and Stanford). The January 2016 meeting was announced in the **Federal Register** (81 FR 226) on

January 5, 2016, and the meeting is summarized at *https://docs.google.com/document/d/1VdP96SYCPcZZvXprowMq8rp6FURCxSh1uo4Dd1tTpJY/edit?usp=drive_web*.

There is no cost for participating in the consortium. No proprietary information will be shared as part of the consortium, and all research results will be in the public domain.

All attendees are required to pre-register. Anyone wishing to attend this meeting must pre-register at *https://appam.certain.com/profile/form/index.cfm?PKformID=0x311041593* by 5:00 p.m. Eastern Time on Thursday, September 8, 2016, in order to attend.

Kent Rochford,

Associate Director for Laboratory Programs.

[FR Doc. 2016–20120 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; South Pacific Tuna Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 24, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tom Graham, (808) 725–5032 or *tom.graham@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) collects vessel license, vessel registration, catch, and unloading information from operators of United States (U.S.) purse seine vessels fishing within a large region of the western and central Pacific Ocean, which is governed by the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. The Treaty, along with its annexes, schedules and implementing agreements, was signed in Port Moresby, Papua New Guinea, in 1987. This collection of information is required to meet U.S. obligations under the Treaty.

The Treaty authorizes U.S. tuna vessels to fish within fishing zones of a large region of the Pacific Ocean. The South Pacific Tuna Act of 1988 (16 U.S.C. 973–973r) and U.S. implementing regulations (50 CFR part 300, subpart D) authorize the collection of information from participants in the Treaty fishery. Vessel operators who wish to participate in the Treaty Fishery must submit annual vessel license and registration (including registration of vessel monitoring system (VMS) units) applications and periodic written reports of catch and unloading of fish from licensed vessels. They are also required to ensure the continued operation of VMS units on board licensed vessels, which is expected to require periodic maintenance of the units. The information collected is submitted to the Pacific Islands Forum Fisheries Agency (FFA) through the U.S. government, NOAA's National Marine Fisheries Service (NMFS). The license and registration application information is used by the FFA to determine the operational capability and financial responsibility of a vessel operator interested in participating in the Treaty fishery. Information obtained from vessel catch and unloading reports is used by the FFA to assess fishing effort and fishery resources in the region and to track the amount of fish caught within each Pacific island state's exclusive economic zone for fair disbursement of Treaty monies. Maintenance of VMS units is needed to ensure the continuous operation of the VMS units, which, as part of the VMS administered by the FFA, are used as an enforcement tool. If the information is not collected, the U.S. government will not meet its obligations under the Treaty, and the lack of fishing information will result in poor management of the fishery resources.

II. Method of Collection

All information should be submitted in hard copy via mail.

III. Data

OMB Control Number: 0648–0218.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 41.

Estimated Time per Response: License application, 15 minutes; VMS registration application, 45 minutes; catch report, 1 hour; and unloading logsheet, 30 minutes.

Estimated Total Annual Burden Hours: 402.

Estimated Total Annual Cost to Public: $143,121 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 18, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–20080 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE794

Atlantic Highly Migratory Species; Advisory Panel for Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; nominations for shark stock assessment Advisory Panel.

SUMMARY: NMFS solicits nominations for the "SEDAR Pool," also known as the Advisory Panel for Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops. The SEDAR Pool is comprised of a group of individuals who may be selected to consider data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a 5-year appointment (2017–2022). Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before September 22, 2016.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: SEDAR.pool@noaa.gov.*
- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: "SEDAR Pool Nomination."
- *Fax:* 301–713–1917.

Additional information on SEDAR and the SEDAR guidelines can be found at *http://www.sefsc.noaa.gov/sedar/.* The terms of reference for the SEDAR Pool, along with a list of current members, can be found at *http://www.nmfs.noaa.gov/sfa/hms/SEDAR/SEDAR.htm.*

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz, (240–681–9037) or Karyl Brewster-Geisz, (301) 425–8503.

SUPPLEMENTARY INFORMATION:

Background

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* states that each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. For the purposes of this section, NMFS applies the above Council provision to the HMS Management Division (See Section 304(g)(1) of the Magnuson-Stevens Act, which provides that the Secretary will prepare fishery management plans for HMS and consult with Advisory Panels under section 302(g) for such FMPs). As such, NMFS has established the SEDAR Pool under this section. The SEDAR Pool currently consists of 27 individuals, each of whom may be selected to review data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool was created specifically for Atlantic oceanic sharks, it may be expanded to include other HMS, as needed.

The primary purpose of the individuals in the SEDAR Pool is to review, at SEDAR workshops, the scientific information (including but not limited to data and models) used in stock assessments that are used to advise NMFS, as a delegate to the Secretary of Commerce (Secretary), about the conservation and management of the Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool, if selected, may participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. In order to ensure that the peer review is unbiased, individuals who participated in a data and/or assessment workshop for a particular stock assessment will not be allowed to serve as reviewers for the same stock assessment. However, these individuals may be asked to attend the review workshop to answer specific questions from the reviewers concerning the data and/or assessment workshops. Members of the SEDAR Pool may serve as members of other Advisory Panels concurrent with, or following, their service on the SEDAR Pool.

Procedures and Guidelines

A. Participants

The SEDAR Pool is comprised of individuals representing the commercial and recreational fishing communities for Atlantic sharks, the environmental community active in the conservation and management of Atlantic sharks, and the academic community that have relevant expertise either with sharks and/or stock assessment methodologies for marine fish species. Also, individuals who may not necessarily work directly with sharks, but who are involved in fisheries with similar life history, biology and fishery issues may be part of the SEDAR panel. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined or limited.

Additional members of the SEDAR Pool may also include representatives from each of the five Atlantic Regional Fishery Management Councils, each of the 18 Atlantic states, both the U.S. Virgin Islands and Puerto Rico, and each of the interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

If NMFS requires additional members to ensure a diverse pool of individuals for data or assessment workshops, NMFS may request individuals to become members of the SEDAR Pool outside of the annual nomination period.

Panel members serve at the discretion of the Secretary. Not all members will attend each SEDAR workshop. Rather, NMFS will invite certain members to participate at specific stock assessment workshops dependent on their ability to participate, discuss, and recommend scientific decisions regarding the species being assessed.

NMFS is not obligated to fulfill any requests (*e.g.,* requests for an assessment of a certain species) that may be made by the SEDAR Pool or its individual members. Members of the SEDAR Pool who are invited to attend stock assessment workshops will not be compensated for their services but may be reimbursed for their travel-related expenses to attend such workshops.

B. Nomination Procedures for Appointments to the SEDAR Pool

Member tenure will be for 5 years. Nominations are sought for terms beginning early in 2017 and expiring in 2022. Nomination packages should include:

1. The name, address, phone number, and email of the applicant or nominee;
2. A description of the applicant's or nominee's interest in Atlantic shark stock assessments or the Atlantic shark fishery;
3. A statement of the applicant's or nominee's background and/or qualifications; and
4. A written commitment that the applicant or nominee shall participate actively and in good faith in the tasks of the SEDAR Pool, as requested.

C. Meeting Schedule

Individual members of the SEDAR Pool meet to participate in stock assessments at the discretion of the Office of Sustainable Fisheries, NMFS. Stock assessment timing, frequency, and relevant species will vary depending on the needs determined by NMFS and SEDAR staff. In 2017, NMFS intends to update the Gulf of Mexico blacktip shark stock assessment and conduct a standard assessment for sandbar sharks. In 2018, NMFS intends to conduct a benchmark assessment for Atlantic blacktip sharks. During an assessment year, meetings and meeting logistics will be determined according to the SEDAR Guidelines. All meetings are open for observation by the public.

Dated: August 18, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–20103 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE812

Pacific Island Fisheries; Aquaculture

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement; request for comments.

SUMMARY: NMFS, in coordination with the Western Pacific Fishery Management Council (Council), intends to prepare a Programmatic Environmental Impact Statement (PEIS) to analyze the potential environmental impacts of a proposed Pacific Islands Region (PIR) aquaculture management program and alternatives. Publication of this notice begins the official public scoping process to help identify alternatives and determine the scope of environmental issues for consideration in the PEIS. The PEIS is intended to support offshore aquaculture development, including appropriate management unit species (MUS) for aquaculture, reasonably foreseeable types of offshore aquaculture operations, and permitting and reporting requirements for persons conducting aquaculture activities in Federal waters.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. NMFS must receive comments by October 31, 2016.

ADDRESSES: You may submit comments on this action, identified by NOAA–NMFS–2016–0111, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/docket?D=NOAA-NMFS-2016-0111,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.
- *Scoping Meeting:* Submit written comments at a scoping meeting held by NMFS for this action.

Instructions: You must submit comments by the above methods to ensure that NMFS receives, documents, and considers your comments. NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. NMFS will consider all comments received as part of the public record and will generally post comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: David Nichols, NMFS, Pacific Islands Regional Office, (808) 725–5180.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage fisheries in U.S. Federal waters in the Pacific Islands through five fishery ecosystem plans (FEPs). The Council recommended amending the five FEPs to establish a management program for aquaculture fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is working with the Council to develop a management program that would regulate and promote environmentally sound and economically sustainable aquaculture in Federal waters of the Pacific Islands Region.

In compliance with the National Environmental Policy Act (NEPA) and consistent with Council recommendations, the intent of the PEIS is to evaluate the potential direct, indirect, and cumulative impacts on the human environment of the proposed Federal action that includes alternative management approaches to implementing an aquaculture management program in the PIR. NEPA requires NMFS to consider the potential impacts of the proposed action and reasonable alternatives to inform the selection of a final preferred alternative for the proposed Pacific Islands aquaculture management program.

Under the Magnuson-Stevens Act, NMFS has authority to regulate commercial fisheries in Federal waters, including aquaculture. Landings or possession of fish in the EEZ from the commercial marine aquaculture production of any species managed under an FEP in the PIR constitutes "fishing" as defined in Magnuson-Stevens Act Section 3(16). Fishing includes all activities and operations related to the taking, catching, or harvesting of fish. The U.S. EEZ in the Pacific Islands generally consists of waters from 3 nm to 200 nm around American Samoa, Guam, Hawaii, the Commonwealth of the Northern Mariana Islands (CNMI), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, and Palmyra Atoll and includes all islands and reefs appurtenant to such islands, reefs, or atolls.

With the exception of coral reef ecosystem species, there is no requirement for Federal permits to conduct aquaculture for MUS in Federal waters. The existing regulatory process is complex and requires multiple permits from several different Federal agencies, including the U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and NMFS.

The preliminary proposed Federal action will identify areas and species suitable for offshore aquaculture, describe the reasonably foreseeable types of offshore aquaculture operations, and provide an early assessment of the potential social, economic, and environmental impacts of such proposed activities. Completing a PEIS for an aquaculture management program will facilitate the review and processing of aquaculture fishery proposals, supporting NEPA reviews for future projects.

The PEIS will include information that NMFS would use to understand the potential effects of managing aquaculture in compliance with applicable laws, including the Magnuson-Stevens Act, Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), the Coastal Zone Management Act (CZMA), and other applicable laws. In addition, the PEIS would allow for intergovernmental public review and input as NMFS develops and considers approval of the management program. The development and content of the PEIS must also be consistent with the NOAA Administrative Orders (NAO) 216–6A as amended, and the Council on Environmental Quality (CEQ) regulations at Title 40, Code of Federal Regulations, Sections 1500–1508. NMFS will also prepare economic analyses consistent with the Regulatory Flexibility Act and a regulatory impact review under Executive Order 12866 to consider in its decision-making for the aquaculture management program. Scoping is an early and open process for determining the scope, or range, of issues that NMFS should address in a PEIS and for identifying the significant issues related to the proposed action. NMFS will also use this scoping process to seek information relating to the extent to which greenhouse gas emissions and climate change impacts associated with the proposed action. NMFS is also soliciting information to consider the effects of the proposed project on historic properties, if any such properties are present.

NMFS has developed two preliminary alternatives for consideration during scoping: A "no-action," or status-quo, aquaculture management alternative, and an alternative that incorporates recommendations from Council meetings since 2008 regarding the development of aquaculture requirements for the five FEPs. The preliminary alternatives shown in Table 1 include a suite of eight possible management actions to consider in the development of a sustainable aquaculture management program for each FEP. NMFS based the preliminary proposed action on Council recommendations and the goals and objectives for responsible development and management of aquaculture in Federal waters. These goals and objectives are in the NOAA Aquaculture Policy Statement (available here: *http://www.nmfs.noaa.gov/aquaculture/policy/24_aquaculture_policies.html*). Under Preliminary Proposed Alternative 1, the No-Action Alternative, NMFS would not implement a permit process for aquaculture in the PIR. The Council and NMFS may provide guidance to potential aquaculture operators, consistent with Council aquaculture recommendations, NMFS Aquaculture Policy, and other applicable guidance and laws. Under this alternative, NMFS would not have a management program specific to each FEP (Table 1). The draft PEIS must include an evaluation of the No-Action Alternative in accordance with NEPA.

Preliminary Proposed Alternative 2 would establish an aquaculture management program that includes elements from each of the eight actions listed in Table 1. Recent Council input on a Pacific Islands Region aquaculture management plan have resulted in recommendations that aquaculture operations do the following:

1. Follow a Council-established review process;
2. Contain permitting and reporting requirements for aquaculture operations including criteria for a limited entry program; and
3. Include environmental monitoring and inspection requirements in the FEP amendment that are consistent with requirements already in place by the State of Hawaii.

Actions include developing a permit process that allows managers to control participation and developing monitoring and reporting requirements to monitor effort, catch, and environmental impacts as the program develops. Potential aquaculture operators would need to acquire a Federal permit from NMFS (Table 1).

TABLE 1—PRELIMINARY PROPOSED ALTERNATIVES FOR CONSIDERATION DURING THE SCOPING PROCESS ON THE DEVELOPMENT OF A SUSTAINABLE, AQUACULTURE MANAGEMENT PROGRAM IN THE PIR EEZ

Action	Alternative 1—status quo/no action	Alternative 2—establish an aquaculture management program for Federal waters
Action 1: Aquaculture Permit Requirements, Eligibility and Transferability.	NMFS currently has no aquaculture management program. Fishing with new gear type, including net pens, for coral reef ecosystem MUS may require a Special Coral Reef Ecosystem Fishing Permit (SCREFP) in the EEZ.	Alternative 2 would establish eligibility, application requirements, and restrictions for transferable aquaculture permits.
Action 2: Operational Requirements.	SCREFP requirements for coral reef ecosystem MUS are developed on case-by-case basis.	Alternative 2 would establish operational requirements specific to the aquaculture system.
Action 3: Duration of Permits	Under the status-quo SCREFPs are effective for no longer than one year unless otherwise specified.	An aquaculture permit would be effective for either five, 10, or 20 years and may be renewed in multi-year increments.
Action 4: Allowable Marine Aquaculture Systems.	Alternative 1 does not specify allowable systems for growing cultured organisms in the PIR EEZ.	Alternative 2 would allow only cages and net pens for aquaculture in the PIR EEZ of specific size and construction. Deviations from these systems would require additional analysis.
Action 5: Species Allowed for Aquaculture.	Under Alternative 1 only coral reef ecosystem MUS are required to have a permit when using new gear type, including net pen gear. No restrictions exist for other MUS.	Alternative 2 would allow aquaculture of only finfish in the PIR EEZ.
Action 6: Aquaculture Siting Requirements and Conditions.	Alternative 1 does not restrict or otherwise identify aquaculture locations.	Alternative 2 would establish marine aquaculture zones, within which NMFS would permit individual sites. Separate facilities within these zones would be spaced at distances based on facility size and oceanographic, biological and human use considerations.
Action 7: Record-keeping and Reporting Requirements.	The NMFS Regional Administrator has authority to specify record-keeping and reporting requirements in a SCREFP.	Alternative 2 would establish electronic record-keeping and reporting requirements that address, at a minimum, escapement, entanglements and interactions with protected species, pathogens and disease, brood stock harvest, water quality monitoring, and aquaculture harvest. Applicants must conduct a baseline assessment and monitoring at the site.
Action 8: Framework Procedures.	Under Alternative 1, specific framework procedures for modifying aquaculture management measures would not be identified.	Under Alternative 2, NMFS would specify framework procedures for modifying management measures for offshore marine aquaculture in the PIR EEZ.

NMFS recognizes that any alternatives considered in the draft PEIS will be based on the combined input from the public, research institutions, fishermen, non-governmental organizations, and affected State and Federal agencies, and Council processes. A principal objective of the scoping process is to identify a range of alternatives that will delineate critical issues and provide a clear basis for distinguishing among those alternatives, and to support the selection of a preferred alternative. NMFS is seeking input during scoping regarding the eight actions in Table 1 that make up the features of an aquaculture management program to assist in developing the reasonable range of alternatives to analyze in the draft PEIS.

In addition, NMFS is seeking input from the public on the issues that NMFS should address in the draft PEIS related to an aquaculture management program and the potential direct, indirect, and cumulative effects of the alternatives on the human environment. After NMFS analyzes a set of management alternatives, the Council may recommend a preferred proposed Federal action alternative. NMFS would then analyze the preferred alternative and a reasonable range of alternatives in a draft PEIS.

Public Involvement

Through this notice, we are notifying the public that NMFS has initiated a NEPA analysis and decision-making process for this proposed action so that interested or affected people may participate and contribute to the development of a final set of alternatives and analysis of environmental effects for NMFS and the Council to consider for an aquaculture management program. Public involvement will provide the information required by NMFS and the Council to identify the necessary scope and range of reasonable management alternatives including the need for additional alternatives that will provide a sound and scientific basis for developing a sustainable and long-term aquaculture management program in the PIR.

NMFS will again ask for additional public comments once NMFS publishes the Draft PEIS, probably in late spring 2017. You may find more information about the NMFS aquaculture program and the progress of the PEIS at *http://www.fpir.noaa.gov/SFD/SFD_aq.html.*

Meetings

NMFS will hold the following public scoping meetings. All meetings will be from 6 p.m. to 9 p.m.

1. Pago Pago, AS, Thursday, September 8, 2016, NOAA Fisheries Conference Room, Pago Plaza, Suite 208, Pago Pago, AS 96799.
2. Hilo, HI, Tuesday, September 13, 2016, University of Hawaii at Hilo, United Classroom Building (UCB) 111, 200 W. Kawili St., Hilo, HI 96720.
3. Kailua-Kona, HI, Wednesday, September 14, 2016, West Hawaii Civic Center, Community Meeting Hale (Bldg. G), 74–5044 Ane Keohokalole Hwy., Kailua-Kona, HI 96740.
4. Honolulu, HI, Thursday, October 13, 2016, NOAA Fisheries Honolulu Service Center at Pier 38, Honolulu Harbor, 1139 N. Nimitz Hwy., Suite 220, Honolulu, HI 96817.

NMFS is also planning to hold scoping meetings in the CNMI and Guam during October 2016. NMFS will announce the details of these meetings in a separate **Federal Register** notice.

Dated: August 17, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–20048 Filed 8–22–16; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No.: CFPB–2016–0042]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting a new information collection titled, "Application Forms for Financial Empowerment Partnerships."

DATES: Written comments are encouraged and must be received on or before October 24, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Forms for Financial Empowerment Partnerships.

OMB Control Number: 3170–0NEW.

Type of Review: New collection (Request for a new OMB Control Number).

Affected Public: Private Sector (*e.g.*, community-based organizations and national non-profit organizations), State, Local, or Tribal Governments, and Federal Government.

Estimated Number of Respondents: 285.

Estimated Total Annual Burden Hours: 1,625.

Abstract: The Bureau's Office of Financial Empowerment (Empowerment) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, Empowerment has developed three initiatives that target intermediary organizations and provide tools, training, technical assistance, and other services to help them reach low-income and economically vulnerable consumers to provide them the financial empowerment tools and information that they need, when they need it, where they are. These initiatives: (1) Your Money, Your Goals, (2) Financial Coaching, and (3) Tax Time Savings all require Bureau to engage organizations to participate in our financial empowerment initiatives. The proposed information collection request consists of application forms that will be used by community-based organizations, local, State, or Federal government entities, and national non-profit organizations to indicate their desire and ability to participate in Empowerment's various initiatives. Empowerment will use the information provided in these applications to select the best qualified organizations for participation.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: August 18, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–20114 Filed 8–22–16; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled External Reviewer Application for review and approval in accordance with the Paperwork Reduction Act of 1995. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Vielka Garibaldi, at 202–606–6713 or email to *PeerReviewers@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within September 22, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on April 14, 2016, at Volume 81, No. 72 FR 22060. This comment period ended June 13, 2016. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information collection. The application and instructions have been updated in order to capture the required information in a more streamlined fashion within the Grants and Member Management system. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the new system becomes available.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: CNCS External Reviewer Application.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals interested in serving as External Reviewers and External Panel Coordinators for CNCS's grant reviews.

Total Respondents: 2000.

Frequency: One time to complete.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 15, 2016.

Vielka Garibaldi,

Director, Office of Grants Policy and Operations.

[FR Doc. 2016–20099 Filed 8–22–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

US Air Force Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, Air Force Scientific Advisory Board.

ACTION: Meeting Notice

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force (USAF) Scientific Advisory Board (SAB) Fall Board meeting will take place on 15 September 2016 at the Strategic Analysis—Executive Conference Center, located at 4075 Wilson Blvd., Suite #200, Arlington, VA 22203. The meeting will occur from 8:00 a.m.–3:30 p.m. on Thursday, 15 September 2016. The session that will be open to the *general public* will be held from 3:00 p.m. to 3:30 p.m. on 15 September 2016. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to welcome new members, prepare for Science and Technology Reviews of the Air Force Research Laboratory, and apportion time for Air Force senior leaders to brief the SAB on their most vital S&T issues. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, a number of sessions of the USAF SAB Fall Board meeting will be closed to the general public because they will discuss classified information

and matters covered by Section 552b of Title 5, United States Code, subsection (c), subparagraph (1).

Any member of the public that wishes to attend this meeting or provide input to the USAF SAB must contact the SAB meeting organizer at the phone number or email address listed in this announcement at least five working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the SAB meeting organizer at least five calendar days prior to the meeting commencement date. The SAB meeting organizer will review all timely submissions and respond to them prior to the start of the meeting identified in this notice. Written statements received after this date may not be considered by the SAB until the next scheduled meeting.

FOR FURTHER INFORMATION CONTACT: The SAB meeting organizer, Major Mike Rigoni at *michael.j.rigoni.mil@mail.mil* or 240–612–5504, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Henry Williams,

Acting Air Force Federal Register Officer.

[FR Doc. 2016–20071 Filed 8–22–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–32]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

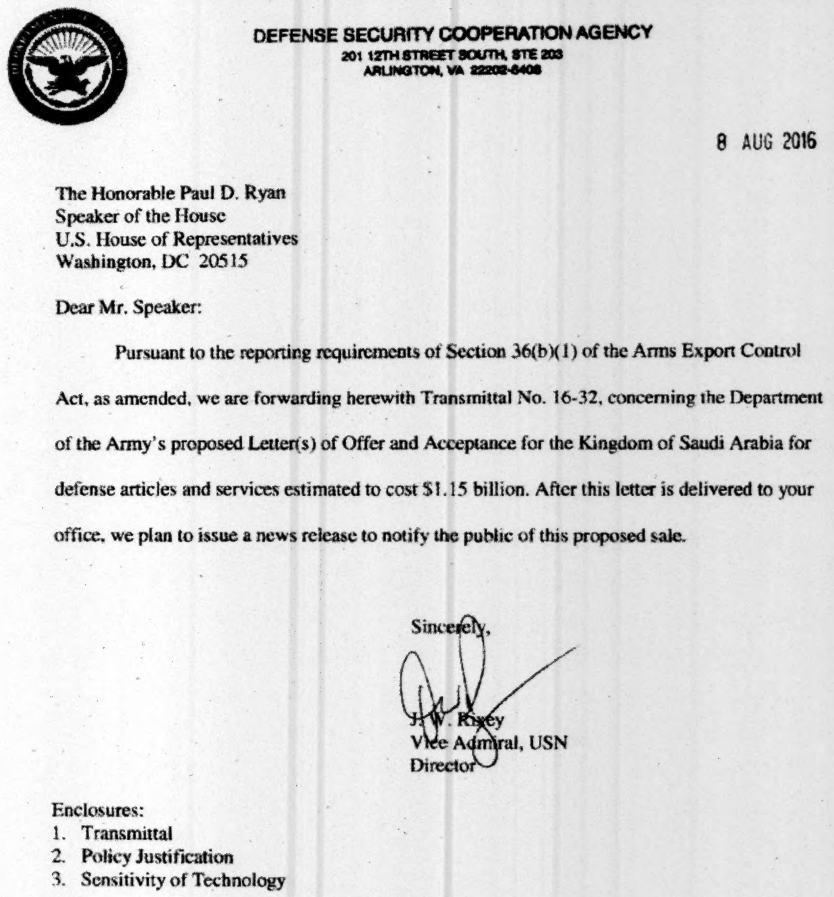
FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/OGC, (703) 697–9027.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–32 with attached Policy Justification and Sensitivity of Technology.

Dated: August 18, 2016.

Aaron Siegel,

Alternate OSD Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

8 AUG 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-32, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance for the Kingdom of Saudi Arabia for defense articles and services estimated to cost $1.15 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0.15 billion
Other	$1.00 billion
TOTAL	$1.15 billion

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:*

Major Defense Equipment (MDE):

One hundred fifty-three (153) M1Al/A2 Abrams Tank structures for conversion to one hundred thirty-three (133) M1A2S Saudi Abrams configured Main Battle Tanks and twenty (20) battle damage replacements for the existing fleet

One hundred fifty-three (153) M2 .50 Caliber Machine Guns

Two hundred sixty-six (266) 7.62mm M240 Machine Guns

One hundred fifty-three (153) M250 Smoke Grenade Launchers

Twenty (20) M88Al/A2 Heavy Equipment Recovery Combat Utility Lift Evacuation System (HERCULES) Armored Recovery Vehicle (ARV) Structures for conversion to twenty (20) M88Al/A2 HERCULES ARVs

One hundred sixty-nine (169) AN/VAS–5 Driver Vision Enhancer—Abrams (DVE–A)

One hundred thirty-three (133) AN/PVS–7B Night Vision Devices

Four thousand two hundred fifty-six (4,256) Rounds M865 Training Ammunition

Two thousand three hundred ninety-four (2,394) Rounds M831Al Training Ammunition

Non-MDE:

This request also includes the following Non-MDE: M1Al/A2 Tank and M88Al/A2 ARV overhaul, conversion and refurbishment services; Special Tools and Test Equipment; Basic Issue Items; Program Management Support; Verification Testing; System Technical Support; Advanced Gunnery Training System (AGTS); Deployable Advanced Gunnery Training System (DAGTS); Transportation; Binoculars; Camouflage Netting; spare and repair parts; communications equipment; personnel training and training equipment; tool and test equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (SR–B–VTF)

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Prior Related Case, if any:*

SR–B–VKZ, Implemented 27 Nov 06, TCV: 3,220,367,024

SR–B–VTC, Implemented 08 Dec 14, TCV: 1,887,611,823

(viii) *Date Report Delivered to Congress:* 08 AUG 2016

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—M1A2S Saudi Abrams Main Battle Tanks and M88Al/A2: Heavy Equipment Recovery Combat Utility Lift Evacuation System (HERCULES) Armored Recovery Vehicles (ARV)

The Kingdom of Saudi Arabia has requested a possible sale of up to one hundred fifty-three (153) M1Al/A2 Tank structures for conversion to one hundred thirty-three (133) M1A2S Saudi Abrams configured Main Battle Tanks and twenty (20) battle damage replacements for their existing fleet; one hundred fifty-three (153) M2 .50 Caliber Machine Guns; two hundred sixty-six (266) 7.62mm M240 Machine Guns; one hundred thirty-three (153) M250 Smoke Grenade Launchers; twenty (20) M88A l/A2 Heavy Equipment Recovery Combat Utility Lift Evacuation System (HERCULES) Armored Recovery Vehicle (ARV) Structures for conversion to twenty (20) M88Al/A2 HERCULES ARVs; one hundred sixty-nine (169) AN/VAS–5 Driver Vision Enhancer-Abrams (DVE–A); one hundred thirty-three (133) AN/PVS–7B Night Vision Devices; four thousand two hundred fifty-six (4,256) Rounds M865 Training Ammunition; and two thousand three hundred ninety-four (2,394) Rounds M831Al Training Ammunition. Also included are M1Al/A2 Tank and M88Al/A2 ARV overhaul, conversion and refurbishment services; Special Tools and Test Equipment; Basic Issue Items; Program Management Support; Verification Testing; System Technical Support; Advanced Gunnery Training System (AGTS); Deployable Advanced Gunnery Training System (DAGTS); Transportation, Binoculars, Camouflage Netting; spare and repair parts; communications equipment; personnel training and training equipment; tool and test equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support. The total estimated value is $1.15 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic regional partner which has been and continues to be a leading contributor of political stability and economic progress in the Middle East. This sale will increase the Royal Saudi Land Force's (RSLF) interoperability with U.S. forces and conveys U.S. commitment to Saudi Arabia's security and armed forces modernization.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The proposed sale will improve Saudi Arabia's capability to meet current and future threats and provide greater security for its critical infrastructure. The addition of these tanks and recovery vehicles to the RSLF's inventory will enhance Saudi Arabia's ability to support its soldiers in the field and to defend the Kingdom's borders. Saudi Arabia will have no difficulty absorbing these vehicles into its armed forces.

The principal contractor will be General Dynamics Land Systems (GDLS), Sterling Heights, Michigan. There are no known offset agreements in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia. Support teams will travel to the country on a temporary basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. This sale will involve the release of sensitive technology to Saudi Arabia. The MlA2S Main Battle Tank (MBT) is an analog/digital hybrid system comprising the best features of the MlAl and MlA2 SEP v2 tanks, while limiting component obsolescence challenges. This configuration is unique to Saudi Arabia. It is armed with the M256 120mm smooth bore gun and has an improved fire control system with range of effective fire in excess of 4 km. Secondary armament of the MlA2S consists of a coaxial 7.62mm machine gun, another 7.62mm machine gun mounted over the gunner's hatch, and a 12.7mm machine gun mounted over commander's hatch. The vehicle is operated by a crew of four, including a tank commander, gunner, loader, and a driver. The M88Al/A2 Heavy Equipment Recovery Combat Utility Lift Evacuation System (HERCULES) Armored Recovery Vehicle (ARV) is a full-tracked armored vehicle used to perform battlefield recovery missions including towing, hoisting, and winching. It is fully capable of recovery support for Abrams series tanks and future heavy combat vehicles.

a. M1A2S Thermal Imaging System (TIS). The TIS is a second generation Forward Looking Infrared Radar (FLIR) system and constitutes a target acquisition system which, when operated with other tank systems, gives the tank crew a substantial advantage over the potential threat. The TIS provides the MlA2S crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is UNCLASSIFIED. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is UNCLASSIFIED with the exception of the specifications for the target acquisition range which are CONFIDENTIAL.

b. Special Armor. The major components of special armor are fabricated in sealed modules and in serialized removable sub-assemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified SECRET. Engineering design and manufacturing data related to special armor are also classified SECRET.

c. M256 120mm Gun and Ammunition System. It is composed of a 120mm smoothbore gun, "long rod" Armor Piercing Fin Stabilized Discarding Sabot (APFSDS) kinetic warheads; and combustible cartridge case ammunition. The suite is UNCLASSIFIED.

d. Advanced Gas Turbine (AGT) 1500 Gas Turbine Propulsion System. The use of a gas turbine propulsion system in the MIA2S is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission, and is UNCLASSIFIED. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor, are proprietary and therefore are commercially competition sensitive.

e. Compartmentation. A major survivability feature of the Abrams Tank is the compartmentation of fuel and ammunition. Compartmentation is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected. As demonstrated during the Abram Live Fire tests, compartmentation significantly enhances crew survivability and substantially reduces the likelihood of the tank being immobilized by an ammunition explosion and fire. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

f. The Driver's Vision Enhancer-Abrams (DVE–A), AN/VAS–5. The AN/VAS–5 is an un-cooled thermal imaging system developed for use while driving Combat Vehicles (CVs) and Tactical Wheeled Vehicles (TWVs). It allows for tactical vehicle movement in support of operational missions in all environmental conditions (day/night and all weather) and provides enhanced driving capability during limited visibility conditions (darkness, smoke, dust, fog, etc.). The DVE program provides night vision targeting capabilities for armored vehicles and long range night vision reconnaissance capability to the warfighter. The highest level of classification is CONFIDENTIAL for hardware and software.

g. AN/PVS–7B Night Vision Devices (NVD). These devices are man-portable NVDs which incorporate image intensification technology. This technology is contained in a sealed intensifier tube that is serialized and removable. Engineering and manufacturing data related to the image intensification tube sub-components are classified CONFIDENTIAL. All data related to vulnerabilities and weaknesses are classified SECRET.

2. Software, hardware, and other classified or sensitive data are reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL and SECRET level. Potential compromise of these systems is controlled through the management of the basic software programs of highly sensitive systems and software-controlled weapons systems on a case-by-case bases.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Saudi Arabia can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2016–20094 Filed 8–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

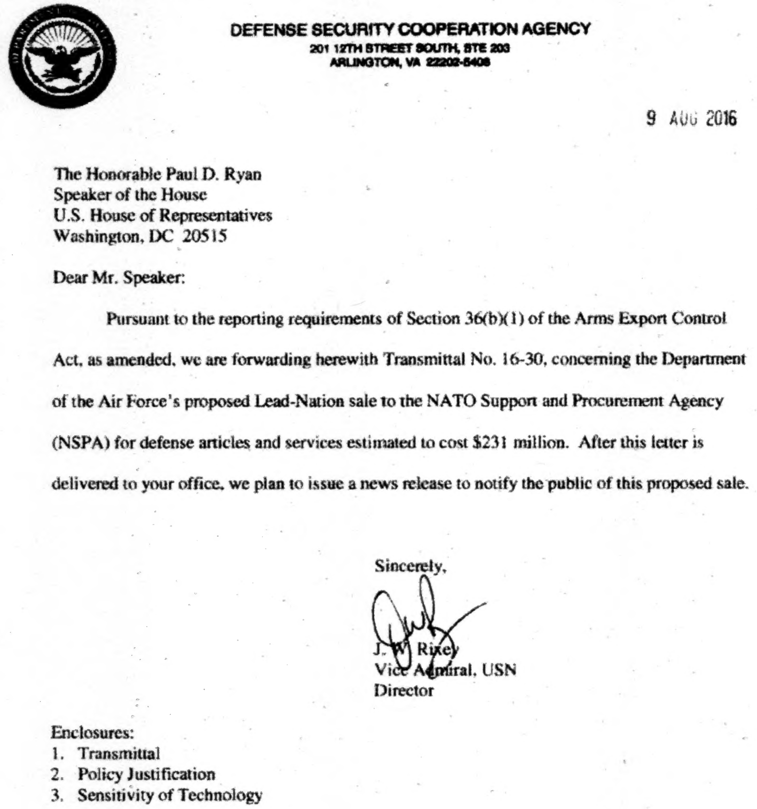
FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/OGC, (703) 697–9027.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–30 with attached Policy Justification and Sensitivity of Technology.

Dated: August 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

9 AUG 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-30, concerning the Department of the Air Force's proposed Lead-Nation sale to the NATO Support and Procurement Agency (NSPA) for defense articles and services estimated to cost $231 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* NATO Support and Procurement Agency (NSPA) as Lead Nation for potential subsequent retransfer to Belgium, Czech Republic, Denmark, Greece, Netherlands, Norway, Portugal, and Spain in accordance with Section 3(d)(4)(C)(ii)

(ii) *Total Estimated Value:*

Major Defense Equipment * $151 million

Other $80 million

TOTAL $231 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Five hundred (500) Joint Direct Attack Munition (JDAM) Guidance Kits, KMU–556 F/B

Forty (40) JDAM Guidance Kits, KMU–557 F/B

One thousand five hundred (1,500) JDAM Guidance Kits, KMU–572 F/B

One thousand (1,000) MAU 210 E/B Computer Control Groups for 1,000-lb. Enhanced Paveway IIs

Three hundred (300) MAU 210 E/B Computer Control Groups for GBU–49s

One thousand twenty-five (1,025) MAU 169 L/B Computer Control Groups for GBU–12s

One thousand and three hundred fifty (1,350) Joint Programmable Fuzes, FMU–152 A/B

Sixty (60) Bomb Fin Assembly and Airfoil Group 650–MXU K/B for GBU–12s

One thousand twenty-five (1,025) Bomb Fin Assembly and Airfoil Group, MXU–650 K/B AFG for GBU–12s

Non-MDE:

This request also includes the following Non-MDE: Detector Sensing Unit (DSU)–38A/B Laser sensors, DSU–330/B proximity sensors, Wireless Paveway Avionics Kit (WIPAK) interfaces for Enhanced Paveway TI bombs, FMU–139C/B electronic bomb fuzes, repair and return services, transportation, engineering services, and other support services.

(iv) *Military Department:* Air Force (YAA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered. or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached annex.

(viii) *Date Report Delivered to Congress:* 9 AUG 2016

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

NATO Support and Procurement Agency—Precision Guided Munitions

NATO Support and Procurement Agency as Lead Nation has requested a possible sale of precision guided munitions for subsequent retransfer to Belgium, Czech Republic, Denmark, Greece, Netherlands, Norway, Portugal, and Spain. Included are: five hundred (500) Joint Direct Attack Munition (JDAM) Guidance Kits, KMU–556 F/B; forty (40) JDAM Guidance Kits, KMU–557 F/B; one thousand five hundred (1,500) JDAM Guidance Kits, KMU–572 F/B; one thousand (1,000) MAU 210 E/B Computer Control Groups for 1,000-lb. Enhanced Paveway IIs; three hundred (300) MAU 210 E/B Computer Control Groups for GBU–49s; one thousand twenty-five (1,025) MAU 169 L/B Computer Control Groups for GBU–12s; one thousand three hundred fifty (1,350) Joint Programmable Fuzes, FMU–152 A/B; sixty (60) Bomb Fin Assembly and Airfoil Group 650–MXU K/B for GBU–12s; one thousand twenty-five (1,025) Bomb Fin Assembly and Airfoil Group, MXU–650 K/B AFG for GBU–12s. It also includes Detector Sensing Unit (DSU)-38A/B Laser sensors; DSU–33D/B proximity sensors; Wireless Paveway Avionics Kit (WIPAK) interfaces for Enhanced Paveway II bombs; FMU–139C/B electronic bomb fuzes; repair and return services; transportation; engineering services; and other support services. The estimated value is $231 million.

The proposed sale improves NATO members' capability to meet current and future ground threats with precision. They will use the enhanced capacity as a deterrent to regional threats, and to increase interoperability within contingency operations. Many of the purchasing nations already have precision-guided munitions in their inventories and will have no difficulty absorbing these additional munitions.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors for production are the Boeing Corporation of St Louis, Missouri, and Raytheon Missile Systems of Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to NATO.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item

No. vii

(vii) *Sensitivity of Technology:*

1. The Joint Direct Attack Munition (JDAM) is a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to existing inventories of BLU–109, BLU–111, and BLU–117, or MK–84 and MK–82 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. The bomb is fitted with the MXU–650 airfoil and the MAU–169 L/B Computer Control Group (CCG) or the MAU–210E/B to guide to its laser-designated target. The JDAM All Up Round (AUR) and all of its components are UNCLASSIFIED; technical data for JDAM are classified up to SECRET. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates.

2. The KMU–556 F/B, KMU–557 F/B and the KMU–572 F/B are the tail kits for the GBU–31. They contain a GPS Receiver Card with Selective Availability Anti-Spoofing Module (SAASM). Information revealing SAASM implementation details such as number or length of keying variables, circuit diagrams, specific quantitative measures, functions, and capabilities is classified SECRET.

3. The DSU–38A/B Laser Sensor uses both GPS-aided inertial navigations and/or Laser guidance to execute threat targets. The Laser sensor enhances standard JDAM's reactive target capability by allowing rapid prosecution of fixed targets with large initial target location errors (TLE). The DSU–38A/B Laser sensor also provides the additional capability to engage mobile targets moving up to 70 mph. The DSU–38 Laser sensor is a strap down (non-gimbaled) sensor that attaches to the Mk–82 or BLU–111 bomb body in the forward fuze well. The addition of the DSU–38 Laser sensor combined with additional cabling and mounting hardware turns a standard GBU–38 JDAM into a GBU–54 Laser JDAM. Information revealing target designation tactics and associated aircraft maneuvers, the probability of destroying specific/peculiar targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified SECRET. Information revealing the probability of destroying common/unspecified targets, the number of simultaneous lasers the laser seeker head can discriminate, and data on the radar/infra-red frequency is classified CONFIDENTIAL.

4. The FMU–152 fuze is a Multi-Delay, Multi-Arm and Proximity Sensor compatible with General Purpose Blast, Fragmentation and Hardened-Target Penetrator Warheads. It is cockpit selectable in-flight (prior to release) when used with JDAMS weapons. It can interface with the following weapons: GBU–10, GBU–12, GBU–15, GBU–16, GBU–24, GBU–27, GBU–28, GBU–31, GBU–32, GBU–38, and AGM–130.

5. If a technologically advanced adversary obtained knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that NSPA and the participating countries can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to NATO, Belgium, Czech Republic, Denmark, Greece, Netherlands, Norway, Portugal, and Spain.

[FR Doc. 2016–20122 Filed 8–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–50]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/OGC, (703) 697–9027.

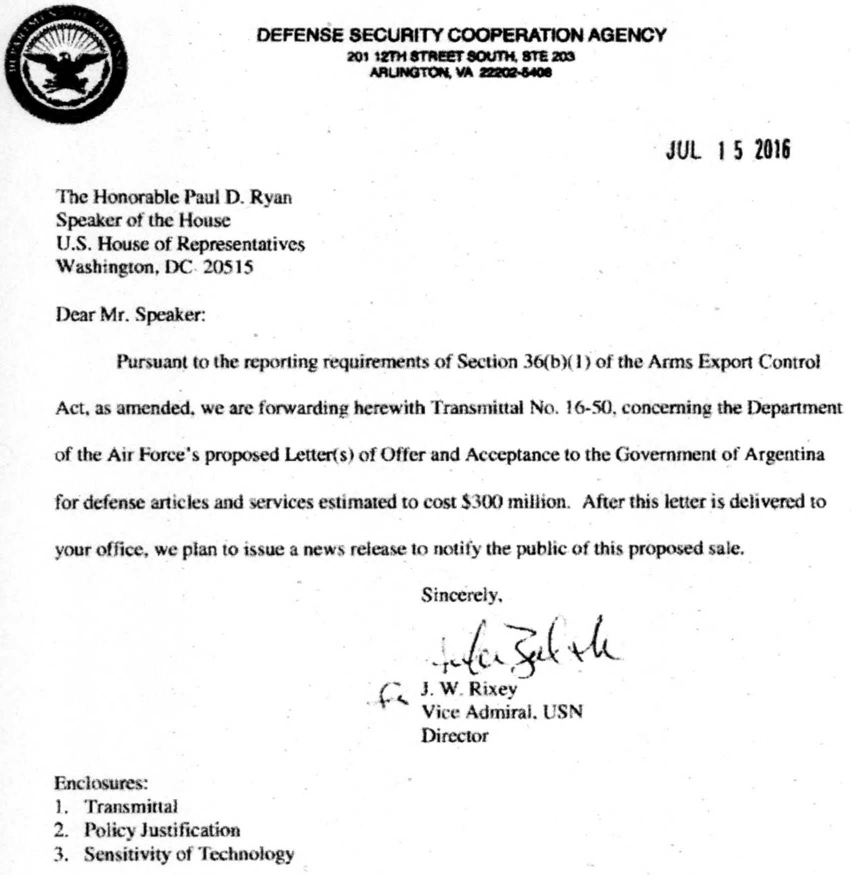
The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–50 with attached Policy Justification and Sensitivity of Technology.

Dated: August 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 15 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-50, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Argentina for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 16–50

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Argentina

(ii) *Total Estimated Value:*

Major Defense Equipment *	$196 million
Other	$104 million
TOTAL	$300 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): Twenty-four (24) T–6C+ Texan trainer aircraft

Non-Major Defense Equipment (MDE): This request includes the following Non-MDE: Spare engines, initial spare parts, support equipment, communications equipment, studies and surveys, contract logistics support and technical services, aircraft technical publications, aircraft ferry and support, life support equipment, initial maintenance training, initial pilot training, follow-on training, alternate mission equipment, Air Force Materiel Command services and travel, unclassified minor modifications and engineering change proposals, ground-based training system, operational flight trainer (OFT) and OFT spare parts.

(iv) *Military Department:* Air Force (AR–D–SAI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached annex.

(viii) *Date Report Delivered to Congress:* 15 JULY 2016

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Argentina—T–6C+ Texan aircraft

The Government of Argentina has requested a possible sale of twenty-four (24) T–6C+ Texan trainer aircraft, spare engines, initial spare parts, support equipment, communications equipment, studies and surveys, contract logistics support and technical services, aircraft technical publications, aircraft ferry and support, life support equipment, initial maintenance training, initial pilot training, follow-on training, alternate mission equipment, Air Force Materiel Command services and travel, unclassified minor modifications and engineering change proposals, ground-based training system, operational flight trainer (OFT) and OFT spare parts. The estimated value is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally. This potential sale will provide additional opportunities for bilateral engagements and further strengthen the bilateral relationship between the United States and Argentina.

The Argentine military has embarked on an ambitious path toward modernizing its military materiel. The proposed sale will revitalize Argentina's capability to train its pilots and fulfill border control missions, especially along its porous northern border. The Argentine Air Force (AAF) will use the enhanced capability to redevelop a professional pilot corps and as a deterrent to illicit activity. The AAF is very experienced working with the Pratt & Whitney PT6 family of engines which they currently have on their T–34, King Air, and Cessna Caravan aircraft. Given the logistical commonalities with the aircraft already in its fleet, the AAF will be able to support and field the new T–6C+s.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Beechcraft Defense Company, LLC, of Wichita, Kansas. The purchaser requested offsets. At this time, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Argentina. The AAF plan is to initially train a cadre of mechanics in in the United States, then a larger group in country via military training teams.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–50

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The T–6C+ is a single engine turboprop trainer aircraft modified with an embedded virtual weapons training, simulation, and no-drop scoring capability, and is UNCLASSIFIED. The simulation and scoring capability is primarily designed to teach air-to-ground operations. The T–6C+ also includes the capability to carry mounted external fuel tanks and employ lightweight training weapons.

2. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Argentina.

[FR Doc. 2016–20104 Filed 8–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Fiscal Year (FY) 2017 Continued Health Care Benefit Program (CHCBP) Quarterly Premium Update

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of CHCBP quarterly premiums for FY 2017.

SUMMARY: This notice provides the CHCBP quarterly premiums for FY 2017.

DATES: The Fiscal Year 2017 rates contained in this notice are effective for services on or after October 1, 2016.

ADDRESSES: Defense Health Agency (DHA), TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Mark A. Ellis, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** (FR) on September 30, 1994 (59 FR 49818) sets forth rules to implement the CHCBP required by Title 10, United States Code, Section 1078a. Included in this final rule were provisions for updating the CHCBP premiums for each federal FY. As stated in the final rule, the premiums are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. Premiums may be revised annually and shall be published when the premium amount is changed.

The DHA has updated the quarterly premiums for FY 2017 as shown below:

Quarterly CHCBP Premiums for FY 2017

Individual	$1,372.00
Family	$3,087.00

The above premiums are effective for services rendered on or after October 1, 2016.

Dated: August 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 2016–20131 Filed 8–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0030]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Study of Title I Schoolwide and Targeted Assistance Programs

AGENCY: Department of Education (ED), Office of Planning, Evaluation and Policy Development (OPEPD).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 22, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0030. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Bogart, 202–205–7855.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of Title I Schoolwide and Targeted Assistance Programs.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,120.

Total Estimated Number of Annual Burden Hours: 2,232.

Abstract: The U.S. Department of Education (Department) requests OMB clearance for data collection activities associated with the Study of Title I Schoolwide and Targeted Assistance Programs. The purpose of this study is to provide a detailed analysis of the types of strategies and activities implemented in Title I schoolwide program(SWP) and targeted assistance program (TAP) schools, how different confgurations of resources are used to support these strategies and how local officials make decisions about the use of these varied resources. To this end the study team will conduct site visits to a set of 40 case study schools that will involve in-person and telephone interviews with Title I district officials and school staff involved in Title I administration. In addition, the study team will collect and review relevant extant data and administer surveys to a nationally representative sample of principals and school district administrators. Both the case study and survey samples include Title I SWP and TAP schools. Clearance is requested for the case study and survey components of the study, including its purpose, sampling strategy, data collection proceedures, and data analysis approach.

Dated: August 18, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–20070 Filed 8–22–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Call for U.S.-China Energy Performance Contracting Pilot Projects To Be Recognized at the 7th Annual U.S.-China Energy Efficiency Forum

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of extension for project submissions.

SUMMARY: The Department of Energy (DOE) gives notice of an extension from August 22, 2016 to September 9, 2016 to submit innovative U.S.-China energy performance contracting (EPC) projects. EPC projects at public, commercial, and industrial facilities located in the U.S. or China with project participation from at least one U.S. entity and at least one Chinese entity are eligible. Eligible entities include energy service companies (ESCOs), technology providers, facility owners or operators, and financiers. EPC projects that meet the 2016 Pilot Project Criteria and demonstrate replicability will receive special recognition at the 7th Annual U.S.-China Energy Efficiency Forum in October 2016 in Beijing. Some recognition recipients will be invited to speak at a special breakout session.

DATES: Project submissions for consideration must be received by September 9, 2016.

ADDRESSES: Project submissions should be emailed in English and Chinese to the Pacific Northwest National Laboratory and ESCO Committee of China Energy Conservation Association at the email addresses provided below. "The Pilot Project Criteria 2016" and "Appendix: Project Submission Template" can be found on: *http://www.globalchange.umd.edu/archived-research-areas/energy-efficiency-and-mitigation/epc/.*

Applicants must complete the Chinese and English project submission template and draft a proposed MOU. The proposed MOU should memorialize the cooperation of U.S. and Chinese entities applying as a team, set out their intention to do an EPC project(s); and include all minimum U.S.-China EPC Pilot Project Program requirements. Submit one email with project submission and proposed MOU as attachments to the following email addresses: *m.evans@pnnl.gov, qing.tan@pnnl.gov* and *international@emca.cn.* Failure to submit complete, bilingual project information may result in ineligibility.

FOR FURTHER INFORMATION CONTACT:

Questions about the U.S.-China Energy Performance Contracting Initiative—Ms. Arlene Fetizanan, U.S. Department of Energy, *Arlene.Fetizanan@ee.doe.gov* or (202) 586–3124.

Questions about the energy performance contracting pilot project criteria and submission—Ms. Sha Yu, Pacific Northwest National Laboratory, *sha.yu@pnnl.gov* or (301) 314–6736.

SUPPLEMENTARY INFORMATION: On July 29, 2016, DOE published in the **Federal Register** a notice of a request for project submissions (the July Notice) entitled *Call For U.S.-China Energy Performance Contracting Pilot Projects To Be Recognized At The Annual U.S.-China Energy Efficiency Forum* (81 FR 49968). That notice required innovative U.S.-China EPC project submissions for consideration to be submitted by August 22, 2016. This notice announces an extension of that deadline from August 22, 2016 to September 9, 2016. For background information on the U.S. China Climate Working Group and requirements for U.S.-China EPC project submissions, see the July Notice.

Issued in Washington, DC, on August 15, 2016.

Robert Dixon,

Director of Strategic Programs, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2016–20101 Filed 8–22–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9951–31–Region 5]

Notification of a Public Teleconference of the Science and Information Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public teleconference of the Science and Information Subcommittee (SIS) to the Great Lakes Advisory Board (Board). The purpose of this meeting is to discuss the Great Lakes Restoration Initiative (GLRI).

DATES: The teleconference will be held on Wednesday, September 14, 2016 from 1:00 p.m. to 3:00 p.m. Central Time, 2:00 p.m. to 4:00 p.m. Eastern Time. An opportunity will be provided to the public to comment.

ADDRESSES: The public teleconference will be held by teleconference only. The teleconference number is: 1–877–226–9607; participant code: 391 354 7398.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this teleconference may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *cestaric.rita@epa.gov.* General information on the GLRI, the Board and SIS can be found at *http://glri.us/public.html.*

SUPPLEMENTARY INFORMATION:

Background: The SIS was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463. The SIS is composed of members from governmental, private sector, non-profit and academic organizations, appointed by the EPA Administrator in her capacity as Chair of the Interagency Task Force (IATF), who were selected based on their established records of distinguished service in their professional community and their knowledge of ecological protection and restoration issues. The SIS will assist the Board in providing ongoing advice on Great Lakes adaptive management and may provide other recommendations, as requested by the IATF.

Availability of Meeting Materials: The agenda and other materials in support of the meeting will be available at *http://glri.us/advisory/index.html.*

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the SIS. Input from the public to the SIS will have the most impact if it provides specific information for the SIS to consider. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by September 9, 2016 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements must be received by September 7, 2016 so that the information may be made available to the SIS for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: one each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 9, 2016.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2016–20153 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 16–927]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, September 15, 2016, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA

16–927 released August 15, 2016. The complete text of this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this document is also available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, September 15, 2016, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

PROPOSED AGENDA: Thursday, September 15, 2016, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript— June 30, 2016
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Numbering Oversight Working Group (NOWG)
6. Report of the Toll Free Number Administration (TFNA)
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
8. Report of the Billing and Collection Working Group (B&C WG)
9. Report of the North American Portability Management LLC (NAPM LLC)
10. Report of the Local Number Portability Administration (LNPA) Transition Oversight Manager (TOM)
11. Report of the Local Number Portability Administration Working Group (LNPA WG)
12. Report of the Future of Numbering Working Group (FoN WG)
13. Status of the Industry Numbering Committee (INC) activities
14. Report of the Internet Protocol Issue Management Group (IP IMG)
15. Summary of Action Items
16. Public Comments and Participation (maximum 5 minutes per speaker)
17. Other Business

Adjourn no later than 2:00 p.m.

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. 2016–20067 Filed 8–22–16; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0304; Docket No. 2016–0001; Sequence No. 6]

Information Collection; USA.gov and All Related Subdomains

AGENCY: The Technology Transformation Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request for comments regarding an existing OMB clearance concerning *USA.gov* and all related subdomains.

DATES: Submit comments on or before October 24, 2016.

ADDRESSES: Submit comments identified by Information Collection 3090–0304; *USA.gov* and All Related Subdomains by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0304. Select the link "Comment Now" that corresponds with "Information Collection 3090–0304; USA.gov and All Related Subdomains". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0304; USA.gov and All Related Subdomains" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0304; *USA.gov* and All Related Subdomains.

Instructions: Please submit comments only and cite Information Collection 3090–0304; *USA.gov* and All Related Subdomains, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Sarah Crane, Federal Citizen Information Center, GSA, telephone 202–208–5855.

SUPPLEMENTARY INFORMATION:

A. Purpose

USA.gov and All Related Subdomains (*https://www.USA.gov*) provides an account to users that gives them control over their interactions with government agencies and how Government uses and accesses their personal information. Users have the option of creating a personal profile that can be reused across government to personalize interactions and streamline common tasks such as filling out forms. Government agencies can build applications that can request permission from the user to access their account and read their personal profile.

The information in the system is contributed voluntarily by the user and cannot be accessed by the Government without explicit consent of the user; information is not shared between government agencies, except when the user gives explicit consent to share his or her information, and as detailed in the *USA.gov* and All Related Subdomains System of Records Notice (SORN), published in the **Federal Register** at 81 FR 4664 on July 18, 2016.

The information collected is basic profile information, and may include:

name, email address, home address, phone number, date of birth, gender, marital status and basic demographic information such as whether the individual is married, a veteran, a small business owner, a parent or a student. Use of the system, and contribution of personal information, is completely voluntary.

B. Annual Reporting Burden

Respondents: 10,000.
Responses per Respondent: 1.
Total annual responses: 10,000.
Hours per Response: .05.
Total Burden Hours: 500.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 3090–0304, *USA.gov* and All Related Subdomains, in all correspondence.

Dated: August 18, 2016.

Steve Grewal,

Deputy Chief Information Officer.

[FR Doc. 2016–20107 Filed 8–22–16; 8:45 am]

BILLING CODE 6820–34–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No. 108232016–1111–05]

Draft Update to the Comprehensive Plan

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf States Act (RESTORE Act or Act) (33 U.S.C. 1321(t) and *note*), the Gulf Coast Ecosystem Restoration Council (Council) requests comments on the proposed draft of its Comprehensive Plan Update (Plan update). The Plan update is intended to provide strategic guidance for future Council restoration activities, and to position the Council to most effectively use future funds for Gulf ecosystem restoration.

FOR FURTHER INFORMATION: Please send questions by email to *frcomments@restorethegulf.gov,* or contact Will D. Spoon at (504) 239–9814. Additional information can also be found on the Web site at *www.RestoreTheGulf.gov.*

DATES: The deadline for public and Tribal comments on this Plan update is October 7, 2016.

ADDRESSES: Comments on the draft Plan update may be submitted through one of these methods:

- *Electronic Web site Submission:* Through the following Web site: *www.RestoreTheGulf.gov.*
- *Email:* By email to: *frcomments@restorethegulf.gov.*
- *Mail/Commercial Delivery:* By surface mail to: Gulf Coast Ecosystem Restoration Council, Attention: Draft Comprehensive Plan Update Comments, Hale Boggs Federal Building, 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

In general, the Council will make such comments available for public inspection and copying on its Web site, *www.RestoreTheGulf.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

SUPPLEMENTARY INFORMATION:

DOCUMENT AVAILABILITY: Copies of the draft Plan update are available at the following office during regular business hours: Gulf Coast Ecosystem Restoration Council, Hale Boggs Federal Building, 500 Poydras Street, Suite 1117, New Orleans, LA 70130. Electronic versions of the draft Plan update can be viewed and downloaded at *www.RestoreTheGulf.gov.*

Background and Summary: The *Deepwater Horizon* oil spill led to 2012 passage of the RESTORE Act, which directs 80 percent of associated civil and administrative Clean Water Act penalties to ecosystem restoration, economic recovery, and tourism promotion in the Gulf Coast region. To administer a portion of these funds, the RESTORE Act established the Council, comprised of principals from the five Gulf Coast States and six federal agencies. One of the Council's primary responsibilities is to develop and update a Comprehensive Plan to restore the ecosystem and the economy of the Gulf Coast region.

The Council approved an Initial Comprehensive Plan in August 2013. Since that time, there have been important developments that warrant a Plan update; the resolution of civil claims against BP has provided clarity regarding the amount and timing of funds available to the Council. Additionally, the Council is now also in a position to develop a Ten-Year Funding Strategy, as required by the RESTORE Act. The Council has also gained valuable knowledge during the process of developing and approving (on December 9, 2015) the first set of foundational restoration activities in its Initial Funded Priorities List (FPL).

The process of developing the FPL was a tremendous success for the Council. The Council benefited greatly from public input during this process. To learn as much as it could from this first round of funding decisions, the Council also conducted a retrospective review of the FPL process and published a *Lessons Learned and Path Forward Summary Report,* which helped identify and reinforce important lessons applicable to future Council activities.

This draft Plan update does not identify specific restoration activities; that is the purpose of future FPLs and State Expenditure Plans (SEPs), described in more detail in the draft Plan update. Rather, the Plan update is intended to improve Council decisions by:

- Ensuring consistency with the Priority Criteria referenced in the Act;
- Reinforcing the Council's goals, objectives and commitments;
- Setting forth a Ten-Year Funding Strategy, including a Council vision for ecosystem restoration;
- Increasing collaboration among Council members and partner restoration programs;
- Refining the process for ensuring that the Council's decisions are informed by the best available science; and
- Improving the efficiency, effectiveness and transparency of Council actions.

Public input on the Council's previous activities has helped shape this draft Plan update. The Council is committed to continuously improving and adapting in response to new information and feedback, and looks forward to hearing the views of all stakeholders on this draft Plan update.

Public and Tribal Meetings on the Draft Plan Update

In addition to the comment opportunities discussed above, the Council will also hold a number of public and Tribal meetings across the Gulf to hear from the public and Tribes regarding this draft Plan update. The locations, dates, and times for the public meetings can be found at *www.RestoreTheGulf.gov*.

Legal Authority: The statutory program authority for the draft Plan update is found at 33 U.S.C. 1321(t).

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2016–19986 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "*Eisenberg Center Voluntary Customer Survey Generic Clearance.*" In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 27, 2016 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by September 22, 2016.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Eisenberg Center Voluntary Customer Survey Generic Clearance

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) renew under the Paperwork Reduction Act of 1995 AHRQ's Generic Clearance to collect information from users of work products and services initiated by the John M. Eisenberg Center for Clinical Decisions and Communications Science (Eisenberg Center). Since September 2008, the Eisenberg Center has been operated by Baylor College of Medicine (BCM), located in Houston, Texas.

AHRQ is the lead agency charged with supporting research designed to improve the quality of health care, reduce its cost, improve patient safety, decrease medical errors, and broaden access to essential services (see 42 U.S.C. 299). The Eisenberg Center, funded by AHRQ, is an innovative effort aimed at improving communication of findings to a variety of audiences ("customers"), including consumers, clinicians, and health care policymakers. The Eisenberg Center compiles research results into a variety of useful formats for customer stakeholders.

This research has the following goals:

(1) Conduct research into effective communication of research findings in order to improve the usability and rapid incorporation of findings into medical practice and decision making.

(2) Conduct research into effective strategies for disseminating evidence-based products, tools, and resources to consumers, clinicians, and other health care professionals, and policymakers.

(3) Evaluate outcomes reported by clinicians and other health care professionals resulting from participation in continuing medical education (CME) initiatives and activities.

(4) Conduct research into factors associated with successful collaboration between AHRQ and partnering institutions and organizations in synthesizing, translating, and disseminating evidence-based research.

Clearance is being requested to cover a three-year period in which differing numbers of information collections concerning products and research activities may be conducted within each contract year. The collections proposed include activities to assist in the development of materials to be disseminated through the Eisenberg Center and to provide feedback to AHRQ on the extent to which these products meet customer needs. These materials include documents that summarize and translate the findings of research reports for various decision-making audiences, such as consumers, clinicians, or policymakers. The summaries are designed to help these decision makers use research evidence to maximize the benefits of health care, minimize harm, and optimize the use of health care resources. In addition, each year of the contract a unique research project will be undertaken to study successful approaches to disseminating AHRQ products in various health care settings and clinical environments. Also each year the Eisenberg Center will develop one interactive decision aid for clinical problems identified from selected research reports. The intent is for the decision aid to increase the customer's knowledge of the health condition, options, and risk/benefits; lead to greater assurance in making a decision; increase the congruence between values and choices; and enhance involvement in the decision making process. Information collections conducted under this generic clearance are not required by regulation and will not be used to regulate or sanction customers. Data collections will be entirely voluntary, and information provided by respondents will be combined and summarized so that no individually identifiable information will be released.

This study is being conducted by AHRQ through its contractor, Baylor College of Medicine, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The data collections listed below will be implemented to achieve project goals. Note: Assessments such as interviews and surveys are here denoted formative if conducted prior to product development or determination of dissemination channels; usability testing or pretesting if conducted while reviewing a draft product, proposed dissemination approach, or other proposed content/strategy; and evaluation if conducted for summative evaluation or to assess satisfaction after the product has been in use or the dissemination campaign, learning activity, or other initiative undertaken.

Data collections will include the following:

(1) Interviews for Product and Decision Aid Development, Testing, and Use. Individual interviews will be conducted with clinical professionals, patients, or other health care consumers, or health policymakers. In some cases focus groups may be substituted for patient interviews. These formative and pretesting/cognitive interviews will allow for (1) collecting input from target audiences regarding the development of summary products and decision aids; (2) determining if intended information and messages are being delivered effectively through products that are developed and disseminated through the Eisenberg Center; (3) assessing whether changes in topical knowledge levels can be identified following exposure to Eisenberg Center informational or instructional products or aids; (4) identifying product strengths and weaknesses to facilitate improvements that are practical and feasible; and (5) assessing decision support from the perspective of each audience. In addition, the Eisenberg Center will conduct a new research project annually to inform the enhancement of existing health information products, beyond what is currently being provided. The accompanying assessments will likely consist of interviews conducted with target audience members and may be integrated into the existing product interviews discussed above. If new assessments are required, the interview scripts and data collection particulars will be submitted as addenda.

(2) Interviews for Dissemination Activities. Interviews will be conducted with leadership and staff of health systems, hospitals, and/or clinics in which dissemination activities are conducted to explore, prior to initiating the project, those pathways holding the greatest potential for successful uptake of the AHRQ materials. Interviews will be conducted again after project conclusion with administrators and product users (*e.g.*, consumers, clinicians) to assess success of dissemination efforts, perceptions around product access, challenges that arose, and strategies to facilitate future successful dissemination initiatives. Interview scripts will be developed and submitted as addenda.

(3) Survey for Decision Aids. Following delivery of the decision aid, a user survey will be completed to explore subjects' impressions of the tool, including ease of use, clarity of presentation, length, balance of information, rating of interactive features, and overall satisfaction. Both clinicians and patients/consumers will be surveyed. For patients, the customer satisfaction survey may include decisional outcome measures (*e.g.*, decisional conflict, desire for involvement in decision-making), measures of attitudes and self-efficacy, and indicators of choice intention or actual choice made. If the aid is evaluated within a clinical context, measures of physician-patient interaction will also be considered. Additionally, clinicians may be interviewed about the impact of the aid on decision making, clinical flow, and patient outcomes. A user survey will be developed and submitted as an addendum.

(4) Survey for Summary Products (initial, follow up). Very brief surveys will be offered to health care professionals, consumers, and policymakers that use the online summaries. Immediately upon accessing the summaries, visitors will be asked to complete a brief survey assessing for whom they were seeking information, how the product might be used, and an email address for a follow-up survey. Respondents will subsequently be sent an email asking them to complete a follow-up online survey assessing how the information has been used, whether it influenced health care practices, and any barriers to use or suggestions for improvement.

(5) Survey of Patient and Consumer Advocacy Organizations. Each project year, representatives from consumer and patient advocacy organizations will be invited to attend a meeting and participate in ongoing activities to facilitate engagement in AHRQ systematic review, translation, and dissemination activities. Surveys by phone or online questionnaire will be used to assess the quality of the in-person meeting and ongoing activities, the impact and value of engaging with AHRQ, the value of research and translation products for the target audiences, how partners and their constituents are using the products, and ways to make the products and partnerships with AHRQ more useful for partners and have a broader reach. The survey and any additional assessment mechanisms that may be useful in evaluating these relationships with advocacy organizations will be developed and submitted as an addendum.

(6) Survey of AHRQ Partners. AHRQ, through the Evidence-based Practice Center (EPC) Program and Eisenberg Center, partners with organizations when developing, translating, and/or disseminating research reports and related products. AHRQ partners include developers of clinical practice guidelines, payers, other Government agencies, private companies, consumer and patient advocacy groups, and health care systems. Surveys by phone or online questionnaire, followed by targeted interviews, will be used to assess the impact and value of AHRQ research products for the target audiences, determine how partners are using the products, and identify ways to make the products and partnerships more useful for partners and have a broader reach. Survey and interview script will be developed and submitted as addenda.

(7) CME Outcomes Survey. AHRQ through the Eisenberg Center will offer AMA PRA Category 1 continuing medical education (CME) credit for certain products that it develops. Clinicians wishing to claim credit must complete an outcome assessment survey delivered online two months after completing the activity.

(8) Interviews and Surveys for Dissemination Research Project. Each project year the Eisenberg Center will propose and conduct a unique research project aimed at disseminating products. As part of that project, formative interviews and potentially cognitive testing will be conducted with consumers, clinicians, and administrators from participating health systems, hospitals, and/or clinics for purposes of assessing current dissemination initiatives, similar products available to their consumers, ways to optimize dissemination, and other indicators as determined by the project aims. These three audiences may also be asked to complete follow-up surveys and/or participate in interviews to document project outcomes and lessons learned from the study. Survey and interview scripts will be developed and submitted as addenda.

The information will be used to develop, improve and/or maintain high quality health care informational products and services to lay public and health care professionals. Each product previously developed by the Eisenberg Center was proposed, drafted, tested, and revised with heavy reliance on data collected in a manner similar to those approaches described in this clearance. This includes data collected at the formative stage when ideas for the product and its information parameters are being developed, through draft testing and revisions, and finally product implementation and evaluation of its usefulness in practice. Work on implementing and evaluating dissemination strategies and approaches will complement the development activities in optimizing delivery to the targeted audiences.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated total burden for the respondents' time to participate in this research. These estimates assume a maximum of 141 Summary products over 3 years with separate products developed for clinicians, policymakers, and consumers.

Formative interviews, and in some cases focus groups, will be used to conduct needs assessment and will be held with clinicians and consumers for development of the products and decision aids, and additionally with policymakers for those products in which policy recommendations are applicable. Interviews will be conducted with no more than 2,115 persons for product development, 180 persons for decision aid development, and 180 persons for development of dissemination initiatives over 3 years, and each will last about 60 minutes.

Once the products are developed they will be subjected to in-person or telephone interviews for purposes of usability and product testing with clinicians, policymakers and consumers. In-person/telephone interviews will be conducted with about 2,115 persons for products and 180 persons for decision aids over 3 years and will take about 60 minutes on average. A second round of interviews will be conducted only occasionally with one or more of the targeted populations if necessary due to substantial product revisions. These interviews may also be used to inform product enhancements in relation to the annual enhancement study. Because these specifications cannot be determined in advance, clearance is being requested for two testing rounds with every product and every audience.

Evaluation surveys will be conducted with approximately 6,000 representatives across the targeted audiences (*i.e.*, consumer, clinician, policymaker) for the health information products and 2,400 persons who have used the decision aids over the 3-year period. The product surveys will take about 5 minutes to complete, and the decision aid surveys about 10 minutes. A follow-up survey will be completed for the product evaluations, which will also last about 5 minutes, while a subset of 180 of those having used the decision aids will be asked to participate in a follow-up evaluation interview lasting an hour.

Those involved in or targeted by the dissemination initiatives will be asked to participate in evaluation interviews, which will include up to 480 persons completing interviews across the 3 project years. *Note:* Because the timing of interviews with persons at the 6 total partner organizations has not yet been finalized, AHRQ is requesting that all dissemination-related interviews be approved for the first project year. For simplicity, the interviews are presented as annualized in Exhibits 1 and 2.

The unique dissemination research project to be proposed and completed annually will include 135 formative interviews with consumers, clinicians, and administrators, with each lasting 1 hour. Follow-up evaluation surveys and interviews will be conducted with 360 and 180 persons, respectively.

AHRQ partners will be asked to complete surveys and interviews in relation to their prior or ongoing collaborative work with AHRQ. These will include 150 persons completing surveys and 60 follow-up interviews. Similar types of surveys designed with the goal of improving products and expanding their research will be completed by 90 representatives of advocacy organizations across the 3 years, with each survey lasting about 10 minutes.

Clinicians that have completed CME accrediting requirements and are requesting CME credit will be asked to complete a follow-up outcomes survey two months following completion of the online activity. These will be completed by no more than 27,000 clinicians over 3 years and will require 5 minutes to complete.

The total burden hours are estimated to be 13,875 annually or 41,625 over 3 years. The total annual cost burden is $237,604.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Product Formative Interviews	705	1	1	705
Product Pretesting Interviews	705	2	1	1,410
Product Evaluation Surveys	2,000	2	5/60	333
Dissemination Formative Interviews	40	1	1	40
Dissemination Evaluation Interviews	120	1	1	120
Decision Aid Formative Interviews	60	1	1	60
Decision Aid Pretesting Interviews	60	1	1	60
Decision Aid Evaluation Interviews	60	1	1	60
Decision Aid Evaluation Surveys	800	1	10/60	133
Research Project Formative Interviews	45	1	1	45
Research Project Evaluation Surveys	120	1	10/60	20
Research Project Evaluation Interviews	60	1	1	60
Partnership Evaluation Surveys	50	1	10/60	8
Partnership Evaluation Interviews	20	1	1	20
Advocacy Meeting Evaluation Surveys	30	1	10/60	5
CME Outcomes Surveys	9,000	1	5/60	750

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total	13,875	NA	NA	3,830

[*] For the 3-year contract period, product formative interviews and product testing interviews will each comprise 300 consumers, 300 clinicians, and 105 policymakers; product evaluation surveys will include 800 consumers, 800 clinicians, and 400 policymakers; dissemination-related formative interviews will include 40 health system/hospital/clinic administrators; dissemination-related evaluation interviews will include 40 consumers, 40 clinicians, and 40 administrators; formative interviews, pretesting interviews, and evaluation interviews for the decision aids will each include 30 consumers and 30 clinicians; evaluation surveys for the decision aids will include 400 consumers and 400 clinicians; formative interviews for the annual dissemination research project will include 15 consumers, 15 clinicians, and 15 administrators; evaluation surveys for the research project will include 50 consumers, 50 clinicians, and 20 administrators; evaluation interviews for the research project will include 20 consumers, 20 clinicians, and 20 administrators; the AHRQ partner surveys will include 50 partners; the AHRQ partner evaluation interviews will include 20 partners; the health advocates surveys will include 30 participants; and CME outcomes surveys will include 500 clinicians for each of 18 CME activities.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate[*]	Total cost burden
Product Formative Interviews	705	705	[a] $54.81	38,641
Product Pretesting Interviews	705	1,410	[a] 54.81	77,282
Product Evaluation Surveys	2,000	333	[a] 54.00	17,982
Dissemination Formative Interviews	40	40	[a] 49.84	1,994
Dissemination Evaluation Interviews	120	120	[a] 54.74	6,568
Decision Aid Formative Interviews	60	60	[a] 57.19	3,431
Decision Aid Pretesting Interviews	60	60	[a] 57.19	3,431
Decision Aid Evaluation Interviews	60	60	[a] 57.19	3,431
Decision Aid Evaluation Surveys	800	133	[a] 57.19	7,606
Research Project Formative Interviews	45	45	[b] 54.74	2,463
Research Project Evaluation Surveys	120	20	[b] 55.96	1,119
Research Project Evaluation Interviews	60	60	[b] 54.74	3,284
AHRQ Partner Evaluation Surveys	50	8	[c] 54.50	436
AHRQ Partner Evaluation Interviews	20	20	[c] 54.50	1,090
Advocacy Meeting Evaluation Surveys	30	5	[d] 21.21	106
CME Outcomes Surveys	9,000	750	[e] 91.66	68,745
Total	13,875	3,830	NA	237,604

[*] National Compensation Survey: Occupational wages in the United States May 2014, "U.S. Department of Labor, Bureau of Labor Statistics."

[a] Based on the mean and/or weighted mean wages for various combinations of consumers (00–0000 all occupations), clinicians (29–1060 physicians and surgeons, 29–1062 family and general practitioners), and health policymakers (11–0000 management occupations, 11–3111 compensation & benefits managers, 13–1141 compensation, benefits & job analysis specialists, 11–9111 medical and health service managers, 13–2053 insurance underwriters and 15–2011 actuaries).

[b] Based on the mean and/or weighted mean wages for various combinations of consumers (00–0000 all occupations), clinicians (29–1060 physicians and surgeons, 29–1062 family and general practitioners), and health system/hospital/clinic administrators (11–9111 medical and health services managers).

[c] Based on the mean wages for AHRQ partners (25–1071 health specialties teachers, postsecondary, 11–1021 general and operations managers, 21–0091 health educators, 21–1093 social and human service assistants, 11–9111 medical and health services managers).

[d] Based on the mean wages for health advocacy organizations (21–1093 social and human service assistants [social advocacy organizations], 21–0091 health educators).

[e] Based on the mean wages for clinicians (29–1060 physicians and surgeons, 29–1062 family and general practitioners).

Exhibit 2 depicts the estimated total cost burden associated with the respondent's time to participate in this research. The cost burden is estimated to be $237,604 annually.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–20035 Filed 8–22–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16AOP]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

TRAUMATIC BRAIN INJURY (TBI) SURVEILLANCE SYSTEM—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests Office of Management and Budget (OMB) approval for three years for a new data collection for a Traumatic Brain Injury (TBI) Surveillance System. TBI is a significant public health concern in the United States, contributing to an estimated 2.2 million Emergency Department (ED) visits, 280,000 hospitalizations, and 50,000 deaths in 2010. These numbers, however, underestimate the true public health and economic burden of TBI in the U.S. because they are based on healthcare administrative data that only capture information on the number of ED visits, hospitalizations, and deaths identified as TBI-related. A surveillance system will accurately determine how many children and adults experience a TBI each year in the United States, and will collect information about the circumstances that identifies groups most at risk for TBI. By administering the surveillance system over time, the surveillance system can monitor trends and allow for an understanding of whether TBIs are increasing or decreasing, and whether prevention efforts are effective.

Data will be collected through household survey conducted as a random digit dial telephone survey utilizing both landline and cellphones; adult respondents will be asked about their own TBI history while adult respondents with children 5–17 years of age will serve as proxies and answer questions about their children's TBI history. Information collected will produce nationally representative incidence estimates of all TBI, with a particular focus on the incidence of sports- and recreation-related TBI (SRR–TBI) among youth 5–21 years of age. Another use of the data is to produce nationally-representative estimates of TBI-related disability. Participation in the information collection is voluntary. The survey will be conducted among English or Spanish speaking participants living in the United States.

The estimated annual burden hours are 4,612. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults 18 or older	Adult Eligibility Screener	2,611	1	2/60
	Adult Screener	14,167	1	14/60
	Adult Survey	2,500	1	21/60
Adolescent 12 to 17 years of age	Adolescent Screener	2,058	1	5/60
	Adolescent Survey	686	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20068 Filed 8–22–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0026]; [Docket No. CDC–2016–0084]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Report of Verified Case of Tuberculosis (RVCT). These data are routinely collected in the operation of Tuberculosis control programs.

DATES: Written comments must be received on or before October 24, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0084 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Report of Verified Case of Tuberculosis (RVCT), (OMB Control No. 0920–0026, Expiration 3/31/2017)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention CDC).

Background and Brief Description

In the United States, an estimated 10 to 15 million people are infected with *Mycobacterium tuberculosis* and about 10% of these persons will develop tuberculosis (TB) disease at some point in their lives. The purpose of this project is to continue ongoing national tuberculosis surveillance using the standardized Report of Verified Case of Tuberculosis (RVCT). Data collected using the RVCT help state and federal infectious disease officials to assess changes in the diagnosis and treatment of TB, monitor trends in TB epidemiology and outbreaks, and develop strategies to meet the national goal of TB elimination.

CDC currently conducts and maintains the national TB surveillance system (NTSS) pursuant to the provisions of Section 301 (a) of the Public Service Act [42 U.S.C. 241] and Section 306 of the Public Service Act [42 U.S.C. 241(a)]. Data are collected by 60 reporting areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean). The last major revision of the RVCT data collection instrument was approved in 2009, in consultation with CDC's Division of Tuberculosis Elimination (DTBE), state and local health departments, and partner organizations including the National TB Controllers Association, the Council for State and Territorial Epidemiologists, and the Advisory Committee for the Elimination of Tuberculosis. No revisions to the RVCT are proposed in this data collection extension request.

CDC publishes an annual report using RVCT data to summarize national TB statistics and also periodically conducts special analyses for publication to further describe and interpret national TB data. These data assist in public health planning, evaluation, and resource allocation. Reporting areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and focus resources to eliminate TB.

No other Federal agency collects this type of national TB data.

In addition to providing technical assistance on the use of RVCT, CDC provides technical support for reporting software.

CDC seeks to request OMB approval to continue with collection of this data. The collection involves approximately 5,496 burden hours, an estimated decrease of 350 hours from 2014. This decrease is due to having fewer TB cases in the United States as we continue progress towards TB elimination.

There is no cost to respondents except for their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Local, state, and territorial health departments	60	157	35/60	5,496
Total				5,496

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20069 Filed 8–22–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Performance Progress Reports for Administration for Children and Families.

OMB No.: 0970–New.

Description: This notice is to solicit comment on the proposed generic information collection request that will be used for Administration for Children and Families to collect performance and progress information from grantees. The narratives and data will be used to determine if grantees are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and if funding should be continued for another budget period.

These reports will be in compliance with the Department of Health and Human Service regulations at 45 CFR 75.342, Monitoring and reporting program performance.

Respondents: State and nonprofit grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PPR	2,000	2	1	4,000

Estimated Total Annual Burden Hours: 4,000 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–20089 Filed 8–22–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

The Low-Income Home Energy Assistance Program Announces the State Median Income Estimates for Federal Fiscal Year 2017

AGENCY: Office of Community Services, ACF, HHS

ACTION: Notice.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces the State Median Income Estimates for a Four-Person Household for the Federal Fiscal Year (FFY) 2017 State Median Income Estimates for Use in the Low-Income Home Energy Assistance Program (LIHEAP) for FFY 2017 (October 1, 2016, through September 30, 2017).. OCS published the estimates on July 5, 2016 in LIHEAP Information Memorandum (IM) 2016–03 as "State Median Income Estimates for Optional Use in FFY 2016 and Mandatory Use in FFY 2017". LIHEAP–IM–2016–03 is available at *http://www.acf.hhs.gov/programs/ocs/resource/liheap-im-2016–03-state-median-income-estimates-for-optional-use-in-ffy-2016-and-mandatory-use-in-ffy-2017.* OCS made the effective date of such estimates July 1, 2016.

DATES: These estimates become effective at any time between July 1, 2016 and the later of (1) October 1, 2016; or (2) the beginning of a grantee's fiscal year.

FOR FURTHER INFORMATION CONTACT: Peter Edelman, Program Analyst, Office of Community Services, 330 C Street SW., 5th Floor, Mail Room 5425, Washington, DC 20201. Telephone: 202–401–5292; Email: *peter.edelman@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This notice announces, for the Low-Income Home Energy Assistance Program (LIHEAP), the estimated median income of four-person households in each state, the District of Columbia, and Puerto Rico for FFY 2017 (October 1, 2016, through September 30, 2017). LIHEAP grantees that choose to base their income eligibility criteria on these state median income (SMI) estimates may adopt these estimates (up to 60 percent) on July 1, 2016 or on a later date as discussed in the "DATES" section. This enables grantees to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2016, or the beginning of the grantee's fiscal year, whichever is later, grantees must adjust their income eligibility criteria so that they are in accord with the FFY 2017 SMI.

Sixty percent of SMI for each LIHEAP grantee, as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

The SMI estimates in this notice are five-year estimates derived from the American Community Survey (ACS) conducted by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau). The use of the five-year data to derive the SMI estimates represents a change from the past nine years, during which OCS used three-year data to derive such estimates. The reasons for this change are (1) the Census Bureau's cessation of the three-year data; and (2) the fact that the five-year data provides a more robust replacement option than the one-year data.

For additional information about the ACS state median income estimates, including the definition of income and the derivation of medians see *http://www.census.gov/acs/www/Downloads/data_documentation/SubjectDefinitions/2013_ACSSubjectDefinitions.pdf* under "Income in the Past 12 Months." For additional information about using the ACS five-year estimates versus using the one-year estimates, see *http://www.census.gov/acs/www/guidance_for_data_users/estimates/*. For additional information about the ACS in general, see *http://www.census.gov/acs/www/* or contact the Census Bureau's Social, Economic, and Housing Statistics Division at (301) 763–3243. For additional information about the accuracy of the ACS SMI estimates, see *http://www.census.gov/acs/www/Downloads/data_documentation/Accuracy/MultiyearACSAccuracyofData2013.pdf*.

In the state-by-state listing of SMI and 60 percent of SMI for a four-person family for FFY 2017, LIHEAP grantees must regard "family" to be the equivalent of "household" with regard to setting their income eligibility criteria. This listing describes the method for adjusting SMI for households of different sizes, as specified in regulations applicable to LIHEAP (45 CFR 96.85(b)). These regulations were published in the **Federal Register** on March 3, 1988, (53 FR 6827) and amended on October 15, 1999 (64 FR 55858).

ESTIMATED STATE MEDIAN INCOME FOR FOUR-PERSON FAMILIES, BY STATE, FOR FEDERAL FISCAL YEAR (FFY) 2017, FOR USE IN THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

States	Estimated state median income for four-person families [1]	60 percent of estimated state median income for four-person families [2] [3]
Alabama	$67,621	$40,573
Alaska	95,967	57,580
Arizona	67,273	40,364
Arkansas	60,481	36,289
California	80,458	48,275
Colorado	87,928	52,757
Connecticut	108,592	65,155
Delaware	88,703	53,222
District of Columbia	98,640	59,184
Florida	67,643	40,586
Georgia	70,132	42,079
Hawaii	88,921	53,353
Idaho	64,234	38,540
Illinois	85,516	51,310
Indiana	73,397	44,038
Iowa	80,299	48,179
Kansas	77,760	46,656
Kentucky	70,084	42,050
Louisiana	73,263	43,958
Maine	78,749	47,249
Maryland	109,262	65,557
Massachusetts	108,978	65,387
Michigan	77,718	46,631
Minnesota	94,387	56,632
Mississippi	59,701	35,821
Missouri	74,162	44,497
Montana	71,453	42,872
Nebraska	78,773	47,264
Nevada	68,978	41,387
New Hampshire	100,496	60,298
New Jersey	109,113	65,468
New Mexico	61,783	37,070
New York	88,451	53,071
North Carolina	70,000	42,000

Estimated State Median Income for Four-Person Families, by State, for Federal Fiscal Year (FFY) 2017, for Use in the Low-Income Home Energy Assistance Program (LIHEAP)—Continued

States	Estimated state median income for four-person families [1]	60 percent of estimated state median income for four-person families [2] [3]
North Dakota	88,621	53,173
Ohio	78,166	46,900
Oklahoma	66,088	39,653
Oregon	72,518	43,511
Pennsylvania	85,036	51,022
Rhode Island	91,452	54,871
South Carolina	66,542	39,925
South Dakota	76,511	45,907
Tennessee	67,026	40,216
Texas	71,307	42,784
Utah	72,805	43,683
Vermont	84,421	50,653
Virginia	94,667	56,800
Washington	86,744	52,046
West Virginia	68,750	41,250
Wisconsin	83,893	50,336
Wyoming	81,632	48,979
Puerto Rico	29,598	17,759

[1] These figures were prepared by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau), from five-year estimates from the 2010, 2011, 2012, 2013, and 2014 American Community Surveys (ACSs). These estimates, like those derived from any survey, are subject to two types of error: (1) Non-sampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data in a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample.

[2] These figures were calculated by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance by multiplying the estimated state median income for a four-person family for each state by 60 percent.

[3] To adjust for different sizes of households for LIHEAP purposes, 45 CFR 96.85 calls for multiplying 60 percent of a state's estimated median income for a four-person family by the following percentages: 52 percent for a one-person household, 68 percent for a two-person household, 84 percent for a three-person household, 100 percent for a four-person household, 116 percent for a five-person household, and 132 percent for a six-person household. For each additional household member above six people, 45 CFR 96.85 calls for adding three percentage points to the percentage for a six-person household (132 percent) and multiplying the new percentage by 60 percent of the median income for a four-person family.

Statutory Authority: LIHEAP was last authorized by the Energy Policy Act of 2005, Pub. L. 109–58, which was enacted on August 8, 2005. This authorization expired on September 30, 2007, and reauthorization remains pending. The formula used to derive the SMI is authorized by 42 U.S.C. 8624(b)(2)(B)(ii).

Mary M. Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–19922 Filed 8–22–16; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Alzheimer's and Dementia Program Data Reporting Tool

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA), Administration for Community Living (ACL) is announcing an opportunity to comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice collects comments on the information collection requirements relating to the continuation of an existing collection for the Alzheimer's Disease Supportive Services Program and expansion of collection to include ACL grantees of the Alzheimer's Disease Initiative—Specialized Supportive Services (ADI–SSS) project.

DATES: Submit written comments on the collection of information by October 24, 2016.

ADDRESSES: Submit written comments on the collection of information by email to *Erin.Long@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Long *Erin.Long@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Alzheimer's Disease Supportive Services Program (ADSSP) is authorized through Sections 398, 399 and 399A of the Public Health Service (PHS) Act, as amended by Public Law 101–557 Home Health Care and Alzheimer's Disease Amendments of 1990. The ADSSP helps state efforts to expand the availability of community-level supportive services for persons with Alzheimer's disease and their caregivers, including underserved populations. ADI–SSS projects are financed solely by Prevention and Public Health Funds. Similar in scope to ADSSP, ADI–SSS projects are designed to fill gaps in dementia-capable home and community based services (HCBS) for persons living with or those at high risk of developing Alzheimer's disease and related dementias (ADRD) and their caregivers by providing quality, person-centered services that help them remain independent and safe in their communities.

In compliance with the PHS Act, ACL revised an ADSSP Data Reporting Tool (ADSSP–DRT) in 2013. The 2016 revised Alzheimer's and Dementia Program Data Reporting Tool (ADP–DRT) collects information about the delivery of direct services by ADSSP and ADI–SSS grantees, as well as basic demographic information about service recipients. The 2016 version includes revisions to the approved 2013 version. The revised version would be in effect beginning 12/31/2016 and thereafter.

The proposed ADP–DRT can be found on AoA's Web site at: *http://nadrc.acl.gov/sites/default/files/uploads/docs/2016%20Proposed%20OMB%20Alzheimer%20Program%20Reporting%20Tool.xlsx.*

ACL estimates the burden of this collection of information as follows:

ANNUAL BURDEN ESTIMATES

Instrument	Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours (annual)
ADP–DRT	Local Program Site	76	2	4.67	709.84
ADP–DRT	Grantee	38	2	3.6	273.6

Estimated Total Annual Burden Hours: 983.44.

Dated: August 17, 2016.

Edwin L. Walker,

Acting Administrator & Assistant Secretary for Aging.

[FR Doc. 2016–20156 Filed 8–22–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Community Living

Proposed Information Collection Activity; Comment Request; Protection and Advocacy Annual Program Performance Report and Statement of Goals and Priorities

AGENCY: Office of Program Support, Administration on Intellectual and Developmental Disabilities, Administration on Disability, Administration on Community Living, HHS.

ACTION: Notice.

SUMMARY: This notice seeks to collect comments on revisions to an existing collection: Annual Protection and Advocacy Systems Program Performance Report (0985–0027). State Protection and Advocacy (P&A) Systems in each State and Territory provide individual legal advocacy, systemic advocacy, monitoring and investigations to protect and advance the rights of people with developmental disabilities, using funding administered by the Administration on Intellectual and Developmental Disabilities, Administration on Disability, Administration on Community Living, HHS.

The Developmental Disabilities and Bill of Rights Act, 42 U.S.C. 15044, requires each P&A to annually prepare a report that describes the activities and accomplishments of the system during the preceding fiscal year and a Statement of Goals and Priorities (SGP) (0985–0034) for each coming fiscal year. P&As are required to annually report on "the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's goals, the extent to which the goals were achieved, barriers to their achievement, the process used to obtain public input, the nature of such input, and how such input was used." To meet it statutory reporting requirements, P&As have used separate forms for submitting the annual report (0985–0027) and the SGP (0985–0034). It is proposed that the two be combined by creating the Protection and Advocacy Annual Program Performance Report and Statement of Goals and Priorities form. By combining the forms, P&As will have a reduced burden by submitting only one report annually. The combined form will also allow federal reviewers to analyze patterns more readily between goals and priority setting and program performance. The annual program performance report (PPR) and SGP is reviewed by federal staff for compliance and program outcomes. Information in the PPRs and SGPs is analyzed to create a national profile of programmatic compliance, program outcomes, and goals and priorities for P&A Systems. These profiles are used to track accomplishments against goals, develop technical assistance, and determine compliance with Federal requirements. Information collected in the unified report also will inform AIDD of trends in P&A advocacy, collaboration with other federally-funded entities, and best practices for efficient use of federal funds.

DATES: Submit written comments on the collection of information by October 24, 2016.

ADDRESSES: Submit written comments on the collection of information by email to: *Clare.Huerta@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Clare Huerta, Administration on Community Living, Administration on Intellectual and Developmental Disabilities, Office of Program Support, 330 C Street SW., DC, Washington, DC 20201, (202) 795–7301.

SUPPLEMENTARY INFORMATION: In compliance with the requirements of Section 506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration on Community Living is soliciting public comment on the specific aspects of the information collection described above. The form is available at *http://www.acl.gov/Programs/AIDD/Program_Resource_Search/Results_DDC.aspx#resources.*

The Department specifically requests comments on: (a) Whether the proposed Collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection technique comments and or other forms of information technology. Consideration will only be given to comments and suggestions submitted within 60 days of this publication.

Respondents: 57 Protection and Advocacy Systems.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Protection and Advocacy Annual Program Performance Report and Statement of Goals and Priorities	57	1	90	5,130

Estimated Total Annual Burden Hours: 5,130.

Dated: August 17, 2016.

Edwin L. Walker,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–20161 Filed 8–22–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0275–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: 30 day Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0990–0275, scheduled to expire on 08/31/2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before September 22, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0275 and document identifier HHS–OS–0990–0275–30D–for reference.

Information Collection Request Title: Performance Data System (PDS).

OMB No.: 0990–0275.

Abstract: This request for clearance is to revise data collection activities and extend by three (3) years a currently approved collection using the OMB approved Performance Data System (PDS) (OMB No. 0990–0275), the tool used by the Office of Minority Health (OMH) to collect program management and performance data for all OMH-funded projects. The revised data collection activities pertain only to current questions about grantee use of social media. The modified social media questions in PDS will be more applicable to OMH grantees, more easily understood, and collect more accurate quantitative metrics. Grantee data collection via the UDS (original data collection system) was first approved by OMB on June 7, 2004 (OMB No. 0990–275). OMB approval was also received for modifications to the UDS (August 23, 2007), which upgraded the data collection tool from the UDS to the PDS (August 31, 2010). A 3-year extension without change of the approved PDS collection was approved August 1, 2013. Clearance is due to expire on August 31, 2016.

Need and Proposed Use of the Information: The clearance is needed to continue data collection using the PDS, a system that enables OMH to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of performance-oriented data tied to OMH-wide performance reporting needs. The ability to monitor and evaluate performance in this manner, and to work towards continuous program improvement are basic functions that OMH must be able to accomplish in order to carry out its mandate with the most effective and appropriate use of resources. The revision of the social media questions is necessary because social media platforms, such as Facebook, Twitter, and blogs, are becoming increasingly utilized by grantees for their usability, free access, and ability to reach a larger audience. The revised questions will lead to increased data collection completeness and quality.

Likely Respondents: Respondents for this data collection include the project directors for OMH-funded projects and/or the date entry persons for each OMH-funded project. Affected public includes non-profit institutions, State, Local, or Tribal Governments.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
PDS	100	4	1.5	600
Total	100	4	1.5	600

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–20130 Filed 8–22–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before September 22, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990–New–30D for reference.

Information Collection Request Title: Evaluation of the Women's Health Leadership Institute Program.

Abstract: The U.S. Department of Health and Human Services (HHS) Office on Women's Health (OWH) is requesting approval for new data collection to assess the impact of the Women's Health Leadership Institute (WHLI) program. The WHLI trained community health workers (CHWs) to gain leadership skills and to use a public health systems approach to address chronic disease and health disparities in their communities. WHLI employed a train-the-trainers model (*i.e.,* experienced personnel coach and mentor inexperienced instructors to develop skills and knowledge needed to deliver the course), where Master Trainers (MTs) learned to deliver the WHLI training curriculum to CHWs. At the end of the program, CHWs received guidance on developing Community Action Projects (CAPs) to implement systems-level changes in their communities.

The evaluation will consist of both a process evaluation that focuses on CHWs' satisfaction with the training and suggestions for improvement, and an outcome evaluation that assesses (1) intermediate outcomes including the sustainability of CHWs' leadership knowledge and competencies, and the application of these competencies in leadership activities and CAP development.; and (2) long-term outcomes including positive systemic and/or community level changes made around women's health issues. Data from the study will enable OWH to understand what components of the training were most successful and to identify aspects of the training in need of improvement. Results will also help OWH with planning and developing future training initiatives to promote effective programs for women and girls.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Online Survey—All CHWs	422	1	25/60	176
Telephone Interviews—CHWs with completed CAPs or other leadership activities	40	1	30/60	20
Telephone Interviews—Master Trainers	18	1	30/60	9
Telephone Interviews—CHW Worksite Supervisors	20	1	30/60	10
Telephone Interviews— Community Stakeholders	20	1	30/60	10
Total	520			225

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–20135 Filed 8–22–16; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before September 22, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990-New-30D for reference.

Information Collection Request Title: Evaluation of the *Second Decade Project* Community Planning Guide.

Abstract: The Office of the Assistant Secretary for Health (OASH) is requesting approval by Office of Management and Budget (OMB) on a new Information Collection Request.

OASH has a long history of collaborating with communities to improve adolescent health outcomes. To further help communities build an environment that promotes adolescent health, OASH recently developed Promoting Health and Healthy Development in the Second Decade of Life: A Planning Guide for Communities (“the Guide”). The purpose of the Guide is to provide an easy to follow tool that community leaders can use to 1) establish a community coalition with broad membership, and 2) develop a community plan for improving adolescent health and well-being that includes multi-impact strategies. To understand whether and how community leaders are able to use the Guide to achieve these two goals, OASH needs information about the Guide’s utility and effectiveness. The Evaluation of the Second Decade Project Community Planning Guide (“the Evaluation”) is intended to support the goals of OASH’s Second Decade Project of helping community leaders incorporate the needs of children, adolescents and young adults in community growth and development plans, and to improve outcomes of young adults and adolescents. Five communities will participate in the piloting and evaluation of the Guide. The Evaluation will provide OASH with critical information regarding the components of the Guide that community leaders found most useful and effective in accomplishing their goals of improving adolescent health and wellbeing; the compilation and inclusiveness of the coalitions implementing the Guide; and the demographic and environmental context of these communities. While secondary data will be collected from sources such as the U.S. Census Bureau American Community Survey and Youth Risk Behavior and National Health Interview Surveys, these sources do not provide nuanced information needed by OASH to understand the contexts in which the Guide is most effective.

Likely Respondents—Qualitative data will be collected through semi-structured telephone interviews and through focus groups. Telephone interviews will be conducted with community leaders (Community Leader Interview) in the five pilot sites to explore how the use of the Guide supported key leaders in their development of a diverse coalition and educating the community about issues facing adolescents. Focus groups will be conducted with coalition members (Coalition Member Focus Groups) from the five pilot sites to assess how the Guide facilitated the work of the coalition to develop a comprehensive community plan that addresses critically important adolescent health issues.

Quantitative data will be collected through Web-based surveys with coalition members from the five communities and with secondary stakeholders—specifically, adolescent health experts and state/local health department officials—selected by OASH. The Coalition Assessment Survey will assess coalition members’ perspectives on the usefulness and ease of implementing the Guide. The Secondary Stakeholder Survey will engage Adolescent Health researchers and practitioners to garner additional feedback and assessment of the Guide.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form Name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Community Leader Interview (CLI)	50	1	1	50
Coalition Member Focus Group (CFG)	80	1	1	80
Coalition Assessment Survey (CAS)	250	1	.25	63
Secondary Stakeholder Survey (SSS)	50	1	.5	25
Total	430			218

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–20110 Filed 8–22–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0937–0025–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0937–0025, scheduled to expire on November 30, 2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before September 22, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0937–0025.

Information Collection Request Title: The Commissioned Corps of the U.S. Public Health Service Application.

Abstract: The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps of the U.S. Public Health Service (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3)), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42 CFR 21.58. The application consists of forms PHS–50, PHS–1813, and the Commissioned Corps Personal Statement.

Likely Respondents: Candidates/Applicants to the Commissioned Corps.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prequalification Questionnaire	6,000	1	15/60	1,500
PHS–50	1,000	1	1.0	1,000
Form PHS–1813	4,000	1	15/60	1,000
Addendum: Commissioned Corps Personal Statement	1,000	1	45/60	750
Total				4,250

Terry S. Clark,
Asst Information Collection Clearance Officer.

[FR Doc. 2016–20134 Filed 8–22–16; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–new–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before September 22, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–new–30D for reference.

Information Collection Request Title: Federal Evaluation of Making Proud Choices! (MPC!).

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting approval by OMB for a new data collection. The Federal Evaluation of Making Proud Choices! (MPC!) will provide information about program design, implementation, and impacts through a rigorous assessment of a highly popular teen pregnancy prevention curriculum—MPC; it includes the baseline survey instrument related to the impact study and instruments for the implementation and fidelity assessment. The evaluation will be conducted in 39 schools nationwide. The data collected from these instruments will be used to describe the characteristics of the study sample of youth, be used in the models for estimating program impacts, and will provide a detailed understanding of program implementation.

Need and Proposed Use of the Information: The baseline survey data will be used to describe the study sample and to assess whether random assignment successfully generated treatment and control groups balanced on important baseline characteristics. The findings from these analyses of program impacts and implementation will be of interest to the general public, to policymakers, and to schools and other organizations interested in supporting a comprehensive approach to teen pregnancy prevention. Likely Respondents: The baseline survey will be collected through a Web based survey with study participants in the participating evaluation schools. Study participants will primarily be in 8th or 9th grade at the time of the baseline survey, and will be enrolled in the schools' mandatory health class.

Burden Statement: The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline survey of impact study participants	865	1	30/60	432.5
Master topic guide for staff interviews	39	1	1	39
Staff survey	26	1	30/60	13
Program attendance data and collection protocol	13	14	9/60	27.3
Program fidelity checklist	9	14	15/60	31.5
Youth focus group	87	1	1	87
Total				630.3

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–20136 Filed 8–22–16; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: November 2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natl Institute of Dental and Craniofacial Research, Democracy One, Conference Room 602, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 17, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20038 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; LD HUBS.

Date: September 12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave NW., Washington, DC 20005.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Building, Room 2130, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 17, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20037 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the amended meeting of the National Cancer Advisory Board, September 7, 2016, 9:00 a.m. to September 7, 2016, 4:15 p.m., National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD, 20892 which was published in the **Federal Register** on August 17, 2016, 81 FR 54817.

This meeting notice has been amended to change the location of the meeting. The meeting will now be held at the National Cancer Institute, Shady Grove Campus, 9609 Medical Center Drive, East Wing, Conference Room TE406, Bethesda, Maryland, 20892. The open session has been amended to end at 2:45 p.m. The closed session has also been amended to begin at 3:00 p.m. and end at 4:15 p.m. The meeting is partially closed to the public.

Dated: August 17, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20036 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: September 27, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: The Committee serves to advise and make recommendations to the Director, Office of Research on Women's Health (ORWH) on a broad range of topics including, the current scope of research on women's health and the influence of sex and gender on human health, efforts to understand the issues related to women in biomedical careers and their needs, and the current status of inclusion of women in clinical trials research.

Place: National Institutes of Health, Building 31, Room 6C, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Terri Cornelison, MD, Ph.D., Associate Director for Clinical Research on Women's Health, Office of the Director, 6707 Democracy Blvd., Room 400, Bethesda, MD 20817, 301–435–1573, *Terri.Cornelison@nih.gov.*

Any interested person may file written comments for the public record by registering and submitting their comments to *ACRWHComments@sp10mail.nih.gov.* Written comments for the public record must not exceed two single-spaced, typed pages, using a 12-point typeface and 1 inch margins; it is preferred that the document be prepared in the MS Word® format. Only testimony submitted to this Web site and received in advance of the meeting are part of the official meeting record.

Supplementary Information: A draft agenda for this meeting is posted at *http://orwh.od.nih.gov/about/acrwh/index.asp.* The meeting will be live-video streamed at *http://videocast.nih.gov/.*

Individuals who plan to attend the meeting in person should contact Faith Zeff at *faith.zeff@nih.gov.* Members of the media will also need to register.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 16, 2016.

Carolyn Baum,

Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20042 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 20, 2016.

Open: 8:30 a.m. to 12:20 p.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Building 31C, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4890, *adombroski@nidcr.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 17, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20039 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 13–14, 2016.

Open: September 13, 2016, 1:00 p.m. to 4:50 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, 1st Floor, Room 620/630, Bethesda, MD 20892.

Closed: September 14, 2016, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, 1st Floor, Room 620/630, Bethesda, MD 20892.

Contact Person: Marguerite Littleton Kearney, Ph.D., R.N., FAAN, Director, Division of Extramural Science Programs, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Room 708, Bethesda, MD 20892–4870, 301–402–7932, *marguerite.kearnet@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested Person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.ninr.nih.gov/aboutninr/nacnr#.VxaCIE0UWpo,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: *August 17, 2016.*

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20041 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Silvio O. Conte Centers for Basic or Translational Mental Health Research.

Date: September 13, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 16, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20040 Filed 8–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0626]

Waterway Suitability Assessment for Expansion of Liquefied Natural Gas Facility; Ingleside, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard, at Sector Corpus Christi, announces receipt of a Letter of Intent (LOI) and Waterways Suitability Assessment (WSA) for three construction projects expanding Federal Energy Regulatory Commission (FERC) approved Liquefied Natural Gas (LNG) facilities in Brownsville, Texas. The LOI and WSA for Annova LNG Common Infrastructure, LLC (Annova LNG) and Texas LNG Brownsville LLC (Texas LNG) were submitted by Rodino, Inc. The LOI and WSA for Rio Grande LNG, LLC was submitted by AcuTech Group, Inc. The Coast Guard is notifying the public of this action to solicit public comments on the proposed construction of these LNG facilities, as defined by 33 CFR 127.005.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before September 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0626 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document: Call or email MST2 Rebekah Wagner, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, *Rebekah.S.Wagner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related materials) on this notice for the waterway suitability assessments for the construction of LNG facilities. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Discussion

Under 33 CFR 127.007, an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or Liquefied Hazardous Gas (LHG), where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit an LOI to the Captain of the Port (COTP) of the zone in which the facility is or will be located. Under 33 CFR 127.009, after receiving an LOI, the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the proposed construction and expansion project related to a FERC approved LNG facility as submitted by Rodino, Inc. on behalf of Annova LNG Common Infrastructure, LLC (Annova LNG) and Texas LNG Brownsville LLC (Texas LNG) and as submitted by AcuTech Group, Inc. on behalf of Rio Grande LNG, LLC. Input from the public may be useful to the COTP with respect to developing the LOR. The Coast Guard requests comments to help assess the suitability of the associated waterway for increased LNG marine traffic as it relates to navigation, safety, and security.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, "Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities." NVIC 01–2011 provides guidance for owners and operators seeking approval to construct and operate LNG facilities. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating the project included in the LOIs and WSAs submitted by Rodino, Inc. and AcuTech Group, Inc. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and also on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

This notice is issued under authority of 33 U.S.C. 1223–1225, Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.009, and 33 CFR 103.205.

Dated: August 16, 2016

M.T. Cunningham,

Captain, U.S. Coast Guard, Acting Captain of the Port Corpus Christi, TX.

[FR Doc. 2016–20088 Filed 8–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0095]

Agency Information Collection Activities: Notice of Appeal or Motion, Form I–290B; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 20, 2016, at 81 FR 31954, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 22, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number [1615–0095].

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0027 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–290B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, employers, private entities and organizations, businesses, non-profit institutions/organizations, and attorneys. Form I–290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets the eligibility requirements, and for USCIS to adjudicate the merits of the appeal or motion to reopen or reconsider.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–290B is 22,062 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 33,093 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,785,573.

Dated: August 17, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–20055 Filed 8–22–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–10–B]

Affirmatively Furthering Fair Housing: Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995

AGENCY: Office of the Assistance Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA) on the Local Government Assessment Tool, the assessment tool developed by HUD for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing Opportunities for Persons with AIDS (HOPWA) formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH). The Local Government Assessment Tool is also available for use for AFHs conducted by joint and regional collaborations between: (1) Such local governments; (2) one or more such local governments with one or more public housing agency (PHA) partners; and (3) other collaborations in which such a local government is designated as the lead for the collaboration.

HUD is committed to issuing four assessment tools for its program participants covered by the AFFH final rule. One assessment tool is for use by local governments (Local Government Assessment Tool) that receive assistance under certain grant programs administered by HUD's Office of Community Planning and Development (CPD), as well as by joint and regional collaborations between: (i) Local governments; (ii) one or more local governments and one or more public housing agency (PHA) partners; and (iii) other collaborations in which such a local government is designated as the lead for the collaboration. The second tool is for use by States and Insular Areas (State and Insular Area Assessment Tool) and joint collaborating partner local governments and/or PHAs (including Qualified PHAs) where the State is designated as the lead entity. The third assessment tool is for PHAs (including for joint collaborations among multiple PHAs). The fourth assessment tool is for Qualified PHAs (including for joint collaborations among multiple QPHAs). The next **Federal Register** Notice that will solicit public comment on the State and Insular Area Assessment Tool will solicit specific feedback from program participants as to how to best facilitate collaboration between program participants using this tool, including any changes to the tool or instructions that may be necessary to facilitate such collaborations.

The Office of Management and Budget (OMB) approved the Local Government Assessment Tool under the PRA for a period of one year. This notice follows HUD's solicitation of public comment for a period of 60 days on the Local Government Assessment Tool that published on March 23, 2016, and takes into consideration the public comments received in response to the 60-day notice. The 60-day notice commenced the notice and comment process required by the PRA in order to obtain approval from OMB for the information collected by the Local Government Assessment Tool. This 30-day notice completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of additional public comments received in response to this notice, HUD will seek renewal of approval from OMB of the Local Government Assessment Tool, with a renewal period of 3 years. In accordance with the PRA, the assessment tool will undergo this public comment process every 3 years to retain OMB approval.

DATES: *Comment Due Date:* September 22, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice. No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dustin Parks, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5249, Washington, DC 20410; telephone number 866–234–2689 (toll-free). Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2015, at 80 FR 81840, HUD announced the availability for use of the Local Government Assessment Tool by notice published in the **Federal Register**. This announcement was preceded by the two **Federal Register** notices for public comment required by the PRA. The 60-day notice was published on September 26, 2015, at 79 FR 57949, and the 30-day notice published on July 16, 2015, at 80 FR 42108, the same day that HUD published in the **Federal Register** its Affirmatively Furthering Fair Housing (AFFH) final rule, at 80 FR 42272. The Local Government Assessment Tool, HUD's AFFH final rule, and HUD's AFFH Rule Guidebook accompanying the Local Government Assessment Tool can all be found at *https://www.hudexchange.info/programs/affh/.* The Local Government Assessment Tool approved by OMB was assigned OMB Control Number 2529–0054, but the period of approval was for one year.

II. The 60-Day Notice for the Local Government Assessment Tool

On March 23, 2016, at 81 FR 15546, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for renewal of approval of the Local Government Assessment Tool. Although HUD made no changes to the Local Government Assessment Tool approved by OMB in December 2015, HUD specifically solicited public comment on 6 issues (inadvertently numbered as 7 in the March 23, 2016 publication). The 60-day public comment period ended on May 23, 2016. HUD received 18 public comments. The following section, Section III, highlights changes made to the Local Government Assessment Tool in response to public comment received on the 60-day notice, and further consideration of issues by HUD. Section IV responds to the significant issues raised by public commenters during the 60-day public comment period, and Section V provides HUD's estimation of the burden hours associated with the Local Government Assessment Tool, and further solicits issues for public comment, those required to be solicited by the PRA, and additional issues which HUD specifically solicits public comment.

III. Changes Made to the Local Government Assessment Tool

The following highlights changes made to the Local Government Assessment Tool in response to public comment and further consideration of issues by HUD.

Inserts. HUD has included two inserts that may be used to facilitate collaboration between different types of program participants on a joint or regional AFH with a local government. The first is an insert for use by Qualified Public Housing Agencies (QPHAs). As a reminder, program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. Please note that QPHAs that collaborate with local governments are still required to complete an analysis of their jurisdiction and region, but HUD believes such analyses would be less burdensome due to the inclusion of this insert. For QPHAs with service areas in the same CBSA as the Local Government, the analysis required in the insert is intended to meet the requirements of a QPHA service area analysis while relying on the Local Government to complete the QPHA's regional analysis. For QPHAs whose service area extends beyond, or is outside of, the Local Government's CBSA, the analysis in the insert must cover the QPHA's service area and region.

The second insert is meant for use by local government consolidated plan program participants that receive relatively small CDBG grants and collaborate with another local government using this Assessment Tool. HUD is proposing that local governments that received a CDBG grant of $500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH may use the insert as part of a collaboration. HOME consortia whose members collectively received less than $500,000 in CDBG funds or received no CDBG funding, in the most recent fiscal year prior to the due date for the joint or regional AFH would also be permitted to use the insert. HUD welcomes input with regard to the utility of the proposed QPHA insert and the proposed insert for local governments that receive smaller amounts of CDBG funds for conducting the jurisdictional and regional analysis of fair housing issues and contributing factors as well as the classifications of grantees that would be permitted to use the inserts as part of a collaboration. HUD will continue to assess the use of any such inserts at the next opportunity for Paperwork Reduction Act approval.

Further, HUD has committed to issuing a fourth assessment tool to be used by Qualified PHAs (including joint collaborations among multiple QPHAs). HUD is also committed to continue to explore opportunities to reduce the burden of conducting AFFH analyses by consolidated planning agencies that receive relatively small amounts of HUD funding.

Jurisdictional and Regional Analysis. HUD has provided additional clarification in some questions in the Assessment Tool to specify the geographic scope of the analysis required by that question.

Contributing Factors. HUD has amended some contributing factors and provided additional clarity in the descriptions of certain contributing factors. HUD has also added the contributing factor of "lack of source of income protection."

Instructions. HUD has provided additional explanation in certain portions of the instructions with respect to how to use the HUD-provided data and the use of local data and local knowledge when completing an

Assessment of Fair Housing. Instructions have also been provided for each of the two inserts. These instructions are both general and on a question-by-question basis.

IV. Public Comments on the Local Government Assessment Tool and HUD's Responses

General Comments

General comments offered by the commenters included the following:

The tool is burdensome and costly. Several of the commenters stated that they recognize the importance of fair housing planning to the development of strong and sustainable communities, but stated that the Local Government Assessment Tool is burdensome, will require additional resources to complete, and grantees' resources are already strained by what they stated was the insufficient HUD funding they currently receive. The commenters stated that despite HUD's announcements that the AFH would reduce the need to hire consultants to help with fair housing planning, the opposite was true and consultants would be needed, and they would be costly. The commenters requested that HUD provide additional funding for grantees to aid them in their fair housing planning requirements. Other commenters stated that at a minimum the Local Government Assessment Tool must be streamlined for small grantees. The commenters stated that reporting and recordkeeping burden table in the 60-day notice greatly underestimates the burden. A commenter suggested that 5,000 hours is a better estimate of the hours needed to complete an AFH.

HUD Response: HUD appreciates and understands the concern of the commenters. HUD's provision of an Assessment Tool, certain nationally-uniform data, and the inclusion of a community participation process, which should yield important information about fair housing issues in a community, are intended to relieve some of the burden associated with conducting an Assessment of Fair Housing. HUD notes that the estimation of burden is an average burden estimate and that depending on the size of the grantee or the complexity of the issues, some grantees may have higher burden hours. HUD hopes that the inclusion of a local government insert for program participants that receive smaller amounts of CDBG funding and QPHAs will also help to reduce burden when such entities choose to partner in a collaboration with a local government.

Comments related to the AFFH Data and Mapping Tool: HUD received a large number of comments related to the HUD-provided data and the Data and Mapping Tool itself. These comments, along with the comments received on several specific data-related issues that HUD solicited public feedback on are discussed in greater detail below.

HUD Response: HUD's responses to the many substantive and valuable comments received are discussed in greater detail below.

The assessment tool duplicates other planning processes. To reduce burden, commenters requested that the AFH community participation process be combined with the citizen participation process that must be undertaken as required by HUD's Consolidated Plan regulations, and the similar public participation process required by the Public Housing Agency (PHA) plan. The commenters stated that the public participation process of the Local Government Assessment Tool is duplicative of the public participation processes required by these other planning documents.

HUD Response: HUD understands the concern of the commenters, but notes that the AFH and the Consolidated plan or PHA Plan (as applicable) are two distinct steps in the planning process. The AFH is intended to undertake a different analysis in order inform the Consolidated plan or PHA Plan. For this reason, it is important that the community have an opportunity to provide the program participant with input at each stage of the planning process. HUD also notes that while there are separate community participation processes for the different stages of the planning process, the requirements for conducting the community participation process are essentially the same. Jurisdictions may be able to appropriately conduct some outreach or hearings on both, but must be aware that submission timelines require that the AFH must be submitted 270 calendar days (for first AFHs) or 195 calendar days (for subsequent AFHs) before the start of the program year for which the next 3–5 year consolidated plan is due It may be more likely that there be shared outreach efforts on a prior year action plan or performance report, but in any such case the AFH should be a distinct agenda item for any public hearing.

The community participation process is not effective. A commenter stated the community participation process fails to encourage a wide range of stakeholders in the AFH process, and that, in order to encourage a robust and meaningful AFH community participation process (page 1), HUD should amend question 2, as follows: "Provide a list of organizations consulted during the community participation process, including stakeholders who are working in the areas of public health, education, workforce development, environmental planning, or transportation." The commenter stated that the tool should also specifically reference civil rights and fair housing organizations and other groups providing legal assistance to families affected by HUD programs in the community participation section. Another commenter asked HUD to change the question that seeks an explanation if there is a small turnout for the public hearing. The commenter stated that local governments may not be able to identify the reasons for a small turnout, and are likely to provide responses that are merely guesswork. The commenter asked that HUD reformulate the question to ask jurisdictions how they plan to change their outreach and other procedures next time to encourage greater turnout. The commenter stated that this approach will encourage constructive thinking about needed changes so that community participation in the fair housing planning process will improve.

HUD Response: HUD notes that the AFFH rule states, at 24 CFR 5.158(a), that "To ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other required planning documents." Further, program participants are directed to "employ communications means designed to reach the broadest audience." 24 CFR .158(a). HUD appreciates the commenter's suggestion to amend question 2, but declines to include such language in the question at this time. HUD notes, however, that the AFFH Rule Guidebook provides additional guidance about potential groups program participants may wish to specifically consult during the community participation process. HUD also acknowledges the suggestion about the low participation question, but declines to revise it at this time.

Integrate planning information in one system. Commenters requested that HUD develop an interface in the Integrated Disbursement and Information System (IDIS) so that grantees may efficiently transfer its Assessment Tool data into their Consolidated Plan and Annual Action Plans.

HUD Response: HUD understands the difficulty in having several different systems for grantees and will continue to evaluate the feasibility of combining systems or having systems connect to one another to pull information from one plan into a subsequent plan.

Undertake consultation with local practitioners. Commenters stated that before implementing the next version of the Local Government Assessment Tool, HUD should undertake consultation with local practitioners.

HUD Response: HUD appreciates this comment, and will seek opportunities in the future to use public feedback including from local government agencies in order to improve the effectiveness and utility and minimize burden of the assessment tool. Local governments are strongly encouraged to submit comments in response to this and other notices regarding assessment tools since that is the primary mechanism for providing feedback under the Paperwork Reduction Act.

Remove list of Contributing Factors. A commenter stated that contributing factors should be removed from the tool because each entitlement jurisdiction should have the freedom to identify the contributing factors that are meaningful to their unique community. The commenter stated that by including this list, HUD introduces predisposed biases and assumes a Fair Housing Impact that may or may not exist. The commenter further stated that a mere correlation to contributing factors does not necessarily cause decreased access to opportunity.

HUD Response: HUD appreciates the commenter's view that local governments should have the freedom to identify contributing factors that are unique to their community. HUD notes that the list provided is of "potential" contributing factors only, and an option for "other" exists on that list. Program participants are encouraged to identify any other contributing factors that are unique to their communities. HUD provides the list of potential contributing factors, which consists of some of the most common contributing factors affecting fair housing issues, in an effort to reduce burden for program participants so that they do not need to come up with a list of factors on their own.

The tool does not address the Housing Choice Voucher (HCV) program. A commenter stated that the Assessment Tool leaves out any questions regarding the HCV program, which is a central part of the Section 8 Administrative plan. The commenter stated that the tool should be revised to include questions related to fair housing, including low payment standards, portability restrictions, inspection delays, refusal to extend search times, lack of notice to families of their choices, lack of assistance to families in locating housing in opportunity areas, and geographic concentration of apartment listings provided to HCV families by the PHA.

HUD Response: HUD appreciates the commenter's suggestion to include additional questions about the HCV program. HUD notes that there are certain questions that relate to the HCV program, however, the issues the commenter raises are addressed through contributing factors, as opposed to individual questions in the Assessment Tool. HUD notes that the descriptions of a number of contributing factors highlight the issues raised by the commenter. In order to not impose additional burden on program participants, HUD declines to add specific questions at this time.

It is not clear how the Assessment Tool addresses homelessness. A commenter stated that many of the issues asked in the Assessment Tool also affect the homeless population, which is made up of persons in protected classes. The commenter stated the section on disproportionate housing needs should include data and analysis on the population of people experiencing homelessness that are currently unhoused. The commenter asked that HUD include "access to public space for people experiencing homelessness" as a contributing factor throughout the assessment. The commenter further stated that laws that criminalize homelessness or otherwise burden the use or access to public space for those without shelter or housing have a deleterious and segregative impact on living patterns and fair housing opportunity that is not captured in any of the other contributing factors. The commenter stated that HUD should specifically reference laws that have the effect of restricting or allowing provision of services to persons experiencing homelessness (including transitional shelters, day shelters, soup kitchens, or other provision of services) in the definitions of "land use and zoning laws" as well as "occupancy codes and restrictions." The commenter suggested, alternatively, that HUD could create a factor that mirrors "regulatory barriers to providing housing and supportive services for persons with disabilities," which appears to serve the same purpose with respect to the fair housing analysis, but for persons with disabilities as opposed to those experiencing homelessness.

HUD Response: HUD appreciates this suggestion and has added language to the instructions relating to the use of local data and local knowledge with respect to homelessness, and added to the description of the contributing factors of "Land use and zoning laws" and "Occupancy codes and restrictions." The addition to the "Land use and zoning laws" description provides, "Restriction of provision of housing or services to persons experiencing homelessness, such as limiting transitional shelters, day shelters, soup kitchens, the provision of other services, or limitations on homeless persons' access areas that are open to the public (*e.g.* anti-loitering or nuisance ordinances)." and the addition to the "Occupancy codes and restrictions" descriptions provides, "Restriction of provision of services to persons experiencing homelessness, such as limiting transitional shelters, day shelters, soup kitchens, or other provision of services." HUD has also noted in the instructions for the Disproportionate Housing Needs section that the HUD-provided data do not include data on persons experiencing homelessness. HUD notes that such data is available from a variety of sources and the analysis relating to disproportionate housing needs may benefit from the use of local data and local knowledge.

HUD further notes that consolidated planning requires an assessment of homeless needs, facilities and services, and a strategy for addressing homelessness.

Include availability of housing at different affordability levels. A few commenters stated that the availability of housing at different affordability levels needs to be included in the definitions of the contributing factors of "location and type of affordable housing" and "availability of affordable units in a range of sizes." The commenters stated that it should be part of the analysis of restrictions placed on affordable housing through other contributing factors, including but not limited to "land use and zoning laws" and "occupancy codes and restrictions." The commenter stated that the current description of "Land Use and Zoning Laws" lists "[i]nclusionary zoning practices that mandate or incentivize the creation of affordable units," and instead the words "lack of" should be added to the very beginning of the description as inclusionary zoning is a tool with the potential to expand access for low-income families who seek to move to lower-poverty.

HUD Response: HUD notes that the contributing factor of "Location and type of affordable housing" does include the concept of different levels of affordability. HUD specifically notes that "What is 'affordable' varies by circumstance . . ." HUD has added "lack of" prior to the bullet point in the description of "Land use and zoning laws" that reads "Inclusionary zoning practices that mandate or incentivize the creation of affordable units."

The tool should address sex discrimination. A few commenters stated that the tool does not mention any questions or prompting related to sex discrimination, and stated that there are several groups that suffer under sex discrimination, such as domestic violence survivors, members of the LGBT community, and victims of sexual harassment. The commenters stated that there are no questions in the tool that directly prompt the jurisdiction to consider barriers to fair housing choice and opportunity for these populations, and that there are no questions that focus on how sexual harassment creates barriers to fair housing choice. The commenters recommended that local nuisance ordinances that negatively impact crime victims be specifically addressed in the AFFH certification process and Local Government Assessment Tool to ensure that meaningful actions are taken on the front end to avoid sex discrimination violations of the Fair Housing Act. The commenters stated that there are policies that penalize property owners based on the number of times police are called, crime victims, including domestic violence victims, have been evicted, threatened with eviction, and denied housing because of calls to the police for domestic violence incidents. The commenters stated that the repeal or modification of such laws and policies should be a component of the Fair Housing Goals and Priorities.

HUD Response: HUD appreciates these commenters suggestions and notes that "sex" is one of the protected characteristics under the Fair Housing Act that must be analyzed in the AFH. HUD notes that there are two tables included in the AFFHT that include data relating to sex. Those tables are Table 1 and Table 2, which provide demographic data for the jurisdiction and region. Table 1 provides demographic data from 2010, while Table 2 provides demographic data for 1990, 2000, and 2010 in order to evaluate trends over time. There are several contributing factors listed in the Assessment Tool that speak to the issues raised by these commenters. For example, the description of the contributing factor or "Lack of state or local fair housing laws," includes protections based on sexual orientation and survivors of domestic violence. HUD has also added a potential contributing factor of "Lack of housing support for victims of sexual harassment, including victims of domestic violence" to the Disparities in Access to Opportunity Section of the Assessment Tool.

The impediments highlighted by the Government Accountability Office (GAO) are outside of a grantee's control. A GAO analysis of 30 Analyses of Impediments (AIs) highlighted the most common impediments to fair housing choice: zoning and site selection, inadequate public services in low- and moderate-income areas, less favorable mortgage terms from private lenders, and lack of information about fair housing rights and responsibilities (GAO, 2010). Some commenters stated that these common impediments are outside of the local government's control. The commenter stated that local governments generally do not have the authority to require a change in zoning or site selection (other than site selection with projects it has funded, which is very small compared to the private market). The commenter stated that the one impediment that the commenter can focus on is access to information about fair housing rights and responsibilities.

HUD Response: Program participants covered by the AFFH rule have both an obligation to comply with the regulation and to affirmatively further fair housing under the Fair Housing Act. *See* 24 CFR5.150–5.180; 42 U.S.C. 3608(d), (e). One of the primary purposes of the Assessment Tool is to consider a wide range of policies, practices, and activities underway in a program participant's jurisdiction and region and to consider how its policies, practices, or activities may facilitate or present barriers to fair housing choice and access to opportunity, and to further consider actions that a program participant may take to overcome such barriers. HUD is aware that program participants may be limited in the actions that they can take to overcome barriers to fair housing choice and that the AFH process does not mandate specific outcomes. However, that does not mean that no actions can be taken, or that program participants should not strive to overcome barriers to fair housing choice or disparities in access to opportunity.

HUD needs to provide more guidance. A commenter stated that HUD has provided extremely little technical guidance, the commenter seeks technical guidance on the role of HUD's Office of General Counsel in the AFH process, and the expectation of HUD's Office of Fair Housing and Equal Opportunity in reviewing the assessments, what the impact is on the community if the plan is rejected and the community's recourse, and best practices. The commenter requested that HUD provides sample documents such as request for proposals (RFP) language for those seeking consultants and Memorandums of Understandings between collaborators.

HUD Response: HUD will continue to provide guidance relating to the AFFH rule and the AFH. HUD recently released a new guidance document titled, "Guidance on HUD's Review of Assessments of Fair Housing (AFH)," and is available at *https://www.hudexchange.info/resource/5069/guidance-on-huds-review-of-assessments-of-fair-housing-afh/.*

Comment: Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs). R/ECAPs. One commenter noted several concerns with HUD's definition of R/ECAPs including both the 50 percent minority threshold and the alternate poverty threshold (three times the CBSA poverty rate when this is lower than 40 percent poverty). As to the 50 percent minority threshold, the commenter noted that in majority-minority jurisdictions, that tracts that could be considered integrated based on an even distribution of the jurisdiction's demographic makeup, would still meet the R/ECAP threshold for minority concentration. Regarding the alternative poverty rate measure the commenter noted that HUD's approach may deviate from the body of evidence on concentrated poverty. The commenter also recommended that both minority population and poverty rate measures should be considered separately and not combined.

HUD Response: HUD thanks the commenter for this feedback. While HUD is declining to adopt changes to the R/ECAP thresholds and methodology at time, it should be noted that program participants are allowed and encouraged to provide any useful additional information, explanation or analysis in their AFH submissions. For instance, an agency in a majority-minority jurisdiction should note this in its analysis of segregation and R/ECAPs. Similarly, an agency in a jurisdiction where HUD's R/ECAP calculation uses the alternative measure to the 40 percent of poverty threshold may make note of this and provide any pertinent discussion of its actual local poverty rate and how that affects how many tracts reflect either of the poverty rate measures (*i.e.* how many meet 40 percent of poverty compared to the R/ECAPs shown in the HUD provided data). R/ECAP analysis should also be accompanied by discussion of qualitative factors including local knowledge on neighborhood conditions that are not apparent from the baseline HUD-provided data. Such qualitative discussion may also include consideration of overall market and neighborhood conditions in R/ECAPs themselves or in the areas surrounding them (*e.g.* are such areas experiencing economic improvements or whether they have access to opportunity assets) or whether they may be immigrant communities with assets or social networks that may not be apparent from the HUD data alone.

Comments in Response to HUD Specific Issues for Comment

As noted earlier, HUD solicited comment on 6 specific issues.

The first five specific issues for which HUD requested public feedback related to the HUD-provided data. These questions were:

1. Should R/ECAPs be amended to exclude college students from the calculation of poverty rate?

2. Should HUD provide additional data on homeownership and rental housing, including maps and tables (*e.g.* data on percent of owner and renter occupied housing by area, maps showing patterns of home ownership and renter occupied housing together with demographics of race/ethnicity, and homeownership/rental rates by protected class group)?

3. Are there changes or improvements that can be made to the Opportuniy 1Index measures? For example, should HUD include additional national data related to schools and education? Should HUD change the variables included in the Labor Market Engagement Index? Are there changes to the transportation indices (currently Transit Trips and Low Transportation Costs) that can be made to better inform a fair housing analysis of *transportation access and whether* transportation provides access to areas of opportunity? Should HUD adjust the Environmental Health Index with new variables and/or a revised formula?

4. Should HUD add Home Mortgage Disclosure Act (HMDA) data to inform a fair housing analysis of lending practices and trends? Which types of HMDA data would be most useful (*e.g.,* loan origination data, data on conventional loans compared to FHA loans, etc.)?

5. Should HUD distinguish between 9 percent and 4 percent tax credits in the Low-Income Housing Tax Credit (LIHTC) data being provided, including in maps of development locations?

Comments: HUD received numerous comments related to these specific questions as well as to more general comments on the HUD-provided data overall and to the AFFH Data and Mapping Tool.

Numerous comments were received on the specific data related questions that HUD included in the 60-Day PRA Notice. These included numerous comments on the opportunity indices, additional data to consider adding to the Data and Mapping Tool, and suggestions for improving the methodology used for some of the components on the data provided.

Commenters expressed concern that the analysis of HUD-provided data will require a high level of expertise that may not be available to localities given their limited budgets. Some commenters expressed concerns with the data in terms of being the most current available. Numerous comments provided suggestions for improving the Data and Mapping Tool's functionality including items such as visual display of the maps and providing users with more options in terms of turning on and off layers of data. Many comments expressed concerns with the complexity of the data being provided and limited ability of program participant staff to understand and assess the information.

HUD Response: HUD appreciates the valuable feedback provided by public commenters on the questions relating to the HUD-provided data and the HUD AFFH Data and Mapping Tool. At this time, HUD has determined that it will be adding additional data on homeownership and rental housing. This data will include maps showing the percent (rate) of owner-occupied and renter-occupied housing by census tract. It will also include a table showing rate of owner-occupied and renter occupied housing by race/ethnicity group at the jurisdiction and region levels. HUD is also considering adding rental housing affordability data for the purpose of facilitating analysis in the PHA Assessment Tool. This new data will facilitate the AFFH analysis, including for existing questions on these topics that were previously included in the assessment tool as published on 12/31/2016.

The comments that were received on the specific questions that HUD included in the 60-Day PRA Notice included numerous substantive and informed suggestions and recommendations. These comments will prove invaluable to helping improve the HUD-provided data, including the opportunity indices, the underlying methodology for many elements and other potential data sources that may be provided in the future. The comments and recommendations will help improve the data being provided to better assist program participants and facilitate their assessments of fair housing.

The Department is taking comments into consideration for making additional improvements to the AFFH Data and Mapping Tool for the benefit of grantees and the public. Many of the comments will prove useful in making further refinements and improvements to the Data and Mapping Tool over time.

HUD is also committed to providing data in a readily understandable manner for the lay user. HUD does not expect program participants to hire statisticians or data experts to utilize the HUD-provided data. HUD has provided several resources to assist program participants and the public in using the HUD-provided data, including webinars, fact sheets, and user guides. HUD has further committed to addressing program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process. The AFFH Rule Guidebook is available at *https://www.hudexchange.info/resource/4866/affh-rule-guidebook/.*

With regard to comments on the frequency of HUD updates to the data provided, HUD expects to update the data provided in the data and mapping tool (AFFHT) on an ongoing basis as is feasible. HUD will provide notification to the public and program participants when such updates occur on the HUD Exchange.

In addition, HUD intends to add additional data resources to the AFFH Data and Mapping Tool which would be optional for grantees to use as supplemental information and would not require a specific response within the assessment tool. This will add flexibility for HUD to make improvements over time and provide grantees access to additional data directly through the AFFH Data and Mapping Tool portal that they may choose to consider or adopt as they complete their Assessment of Fair Housing.

With regards to providing LIHTC data distinguishing between 4 percent and 9 percent tax credits, HUD will consider options for providing this data in the future. HUD reiterates its acknowledgement of the different policy considerations that should be taken into account, particularly as regards the use of 4 percent tax credits for rehabilitation and preservation of the existing affordable housing stock.

Comment: Several comments were received on the Environmentally Healthy Neighborhoods Index. These comments included suggestions for other environmental related issues that should be captured in the assessment tool.

HUD Response: HUD will take all comments on the opportunity indices under consideration. HUD also notes that many of the other environmental-related issues are captured in the descriptions of the various potential contributing factors in the Disparities in Access to Opportunity section of the Assessment Tool. For example, "Lack of public investment in specific neighborhoods, including services and amenities," is described as follows: "The term "public investment" refers here to the money government spends on housing and community development, including public facilities, infrastructure, and services. Services and amenities refer to services and amenities provided by local or state governments. These services often include sanitation, water, streets, schools, emergency services, social services, parks and transportation. Lack of or disparities in the provision of municipal and state services and amenities have an impact on housing choice and the quality of communities. Inequalities can include, but are not limited to disparity in physical infrastructure (such as whether or not roads are paved or sidewalks are provided and kept up); differences in access to water or sewer lines, trash pickup, or snow plowing. Amenities can include, but are not limited to recreational facilities, libraries, and parks. Variance in the comparative quality and array of municipal and state services across neighborhoods impacts fair housing choice." HUD also notes in response to the issue of cost of water and sanitation services that the data provided for housing cost burden includes the cost of utilities.

In addition to the specific questions relating to data issues, HUD also solicited public feedback on the following specific question: Should HUD make any other changes to the Local Government Assessment Tool to facilitate joint or regional collaboration or facilitate a meaningful fair housing analysis and priority and goal setting?

Comments: A few commenters responded to this question stating no—that collaboration needs time to form on its own, and that pushing grantees towards collaboration is not helpful or useful. The commenters stated that, in particular, first round grantees will have little time to focus on collaboration, and regionalism is not related to the courts disparate impact decision. The commenters stated that regional collaboration means more centralized government planning and reduction of local government authority. The commenters stated that, at this stage, HUD should refrain from pushing grantees to collaborate without additional time to absorb the requirements of the tool. The commenters stated that HUD has still not provided concrete guidance on what a collaboration would look like and how a collaboration would take "meaningful actions" to further its goals identified in the AFH, and stated that commenters need this guidance. Another commenter cautioned that requirements for collaboration should not result in bias against individual plans.

Other commenters stated that requirement for a regional analysis should be made optional, and stated that it will only be important for those jurisdictions that choose to collaborate on a regional plan, and only increases administrative burden on those who complete their plan independently. The commenters suggested that the tool include some questions specifically focused on collaboration so that grantees will have some idea of HUD's expectations regarding collaboration.

A commenter stated that for collaborations between PHAs and cities dual data sets are sometimes not available. In a similar vein, a commenter stated that there will be issues with tracking school age children with collaborations between PHAs and cities because each use different mechanisms to track such children what with all the different schooling options (public, private, charter, etc.). The commenter recommended HUD reconsider the approach to overlaying education and housing data to facilitate data collection for a meaningful AFH in this type of collaboration.

Another commenter recommended that for jurisdictions coming together in a regional collaboration, a supplemental section to be completed separately by each jurisdiction in the regional AFH, that indicates that jurisdiction's role in the fair housing issues identified, and specific goals that each jurisdiction can take to contribute to the regional goals identified in the regional AFH.

Some commenters were concerned about the lists of potential contributing factors, stating that by including this list, HUD introduces predisposed biases and assumes a Fair Housing Impact that may or may not exist. A mere correlation to contributing factors does not necessarily cause decreased access to opportunity.

A commenter stated that the Local Government Assessment Tool should be conformed to the PHA Assessment Tool. The commenter stated that if a local government takes the lead in a regional consortium, or with its local PHA, it will undermine the assessment if detailed PHA analyses are omitted from the form. The commenter stated that the Local Government Tool should also contain data from the State tool such as details on the LIHTC program, and questions on disparities related to public health services and public safety.

HUD Response: The benefits of joint collaboration include a joint assessment of their shared issues and potentially for establishing shared goals leading to better coordination of program activities for the benefit of program recipients and overcoming the effects of fair housing issues. In addition, the experience of collaborating on the analysis and other parts of the assessment itself can provide ongoing benefits over time, as different types of housing and community development agencies work together in different contexts. HUD notes that it has added "inserts" in order to help facilitate collaborations among different types of program participants. HUD specifically solicits comments below, related to this newly added content of the Assessment Tool.

As HUD has stated in previous notices, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including for States and Insular Areas, and for PHAs not submitting an AFH in a joint or regional collaboration with a local government. In addition, HUD has stated that the basic structure of the Assessment Tool for Local Governments would be illustrative of the questions that will be asked of all program participants. *See* 80 FR 42,109 (July 16, 2015).

V. Overview of Information Collection

Under the PRA, HUD is required to report the following:

Title of Proposal: Assessment of FairHousing Tool.

OMB Control Number, if applicable: 2529–0054.

Description of the need for the information and proposed use: The purpose of HUD's Affirmatively Furthering Fair Housing (AFFH) final rule is to provide HUD program participants with a more effective approach to fair housing planning so that they are better able to meet their statutory duty to affirmatively further fair housing. In this regard, the final rule requires HUD program participants to conduct and submit an AFH. In the AFH, program participants must identify and evaluate fair housing issues, and factors significantly contributing to fair housing issues (contributing factors) in the program participant's jurisdiction and region.

The Assessment Tool is the standardized document designed to aid program participants in conducting the required assessment of fair housing issues and contributing factors and priority and goal setting. The Assessment Tool asks a series of questions that program participants must respond to in carrying out an assessment of fair housing issues and contributing factors, and setting meaningful fair housing goals and priorities to overcome them.

Agency form numbers, if applicable: Not applicable.

Members of affected public: As noted earlier in this document, local governments that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD when conducting and submitting their own AFH, and any PHAs that choose to partner with such local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.

Please see table below.

REPORTING AND RECORDKEEPING BURDEN

	Number of respondents *	Number of responses per respondent	Frequency of response **	Estimated average time for requirement (in hours)	Estimated burden (in hours)
CFR Section Reference: § 5.154(d) (Assessment of Fair Housing)..	2,294 total entities (1,194 Entitlement Jurisdictions and approximately 1,100 PHAs) *.	1	Once every five years (or three years in the case of 3- Year Consolidated Plans) **.		
Entitlement Jurisdiction	1,194	....	....	*** 240	286,560
PHAs	1,100	....	....	**** 120	132,000
Total	2,294	....	....	....	418,560

* This template is primarily designed for local government program participants, of which there are approximately 1,194, and PHAs seeking to join with local governments on a jointly submitted AFH. The estimate of 1,100 PHA joint partners is a modest decrease from the previous estimate of 1,314 PHAs that was included in the 60-Day PRA Notice. This change is discussed in more detail below.

There are 3,942 PHAs, and HUD estimates that approximately 1,100 of PHAs may seek to join with a local government and submit a joint AFH. The Total Number of responses for local government entitlement jurisdictions includes all 1,194 such agencies. The total hours and burden are based on the total estimated number of both types of program participants and the "estimated average time" listed for type of program participant.

** The timing of submission depends upon whether a local government program participant submits its consolidated plan every 3 years or every 5 years.

*** The estimate of 240 hours is an average across all local government program participants, with some having either higher or lower actual burden.

**** PHAs participating in joint submissions using the Assessment Tool under this notice are assumed to have some fixed costs, including staff training, conducting community participation costs, but reduced costs for conducting the analysis in the assessment itself.

Comparison of Burden Estimate With Estimate From the 60-Day Notice

The total estimated burden of 418,560 hours is a reduction from the estimate of 444,240 total hours that was included in the 60-Day PRA Notice for this assessment tool. All of the reduction is attributable to a revision of the estimate of the number of public housing agencies that are estimated to enter into joint partnerships using this tool, rather than any revision in the estimated burden to be incurred by individual agencies using the tool. This revision is discussed in more detail below.

Note on Costs for Smaller Agencies

HUD acknowledges that actual participation in joint and regional partnerships may differ from these initial estimates and may vary according to a variety of factors such as the availability of local or state agency potential joint participants. For more information on the range of costs, see the Regulatory Impact Analysis that was issued by HUD to accompany the AFFH Proposed Rule. (Available at *https://www.huduser.gov/portal/publications/pdf/FR-5173-P-01_Affirmatively_Furthering_Fair_Housing_RIA.pdf*).

Smaller agencies are estimated to have lower costs, based on both the required scope of analysis and scope of their responsibilities and program resources. All agencies however will have some fixed costs, including for training for staff and conducting community participation. HUD will continue to provide additional assistance including training materials, resources and opportunities. HUD's goal is to help agencies in meeting the goal of affirmatively furthering fair housing.

HUD reiterates the commitment it made in the December 31, 2015 Notice announcing the initial one-year implementation period for the local government assessment tool, to: "[Further address] program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process."

HUD has also added a significant new option that is intended to reduce burden for smaller consolidated planning agencies while assisting them in affirmatively furthering fair housing. This is the streamlined assessment "insert" for local government agencies that choose to partner with another local government acting as a lead entity for a joint or regional partnership. For purposes of estimating burden hours, all local government agencies, including those that might use this new streamlined "insert" assessment, are included in the overall average burden estimate applied to all 1,194 consolidated planning agencies. Smaller local governments are already estimated to have lower costs within that average to complete an assessment.

Joint and Regional Cooperation

As mission-dedicated public agencies, all types of housing and community development agencies share a common purpose in providing affordable housing to families and individuals most in need and improving neighborhoods and communities. While HUD recognizes that there may be some benefit to agencies in terms of cost sharing to complete planning requirements, HUD acknowledges that the primary benefits of joint participation may likely not be directly related to such administrative considerations. Indeed, cross-agency collaboration entails its own costs, including additional staff time for communication and coordination. Rather, the benefits are more likely to result from identifying common shared issues, contributing factors, concerns, obstacles, goals, and strategies and actions, in order to better meet their shared mission and improve program outcomes. Some objectives may also be better met through coordinating program activities and impact across jurisdictional boundaries. There may also be other indirect benefits from interagency coordination and communication and information sharing that are not easily quantified.

Explanation of Revision in PHA Participation Estimates

HUD is including the following information in the 30-Day PRA Notices for all three of the assessment tools that are currently undergoing public notice and comment. The information is intended to facilitate public review of HUD's burden estimates. HUD is revising its burden estimates for PHAs, including how many agencies will join with other entities (*i.e.* with State agencies, local governments, or with other PHAs), from the initial estimates included in the 60-Day PRA Notices for the three assessment tools. These revisions are based on several key changes and considerations:

(1) HUD has added new option for QPHAs, to match the approach already presented in the State Assessment Tool as issued for the 60-Day PRA Notice, to facilitate joint partnerships with Local Governments or other PHAs using a streamlined "insert" assessment. Using this option, it is expected that the analysis of the QPHA's region would be met by the overall AFH submission, provided the QPHA's service area is within the jurisdictional and regional scope of the local government's Assessment of Fair Housing, with the QPHA responsible for answering the specific questions for its own programs and service area included in the insert.

(2) HUD's commitment to issuing a separate assessment tool specifically for QPHAs that will be issued using a separate public notice and comment Paperwork Reduction Act process. This QPHA assessment tool would be available as an option for these agencies to submit an AFH rather than using one of the other assessment tools. HUD assumes that many QPHAs would take advantage of this option, particularly those QPHAs that may not be able to enter into a joint or regional collaboration with another partner. HUD is committing to working with QPHAs in the implementation of the AFFH Rule. This additional assessment tool to be developed by HUD with public input will be for use by QPHAs opting to submit an AFH on their own or with other QPHAs in a joint collaboration.

(3) Public feedback received on all three assessment tools combined with refinements to the HUD burden estimate.

Based on these considerations, HUD has refined the estimate of PHAs that would be likely to enter into joint collaborations with potential lead entities. In general, PHAs are estimated to be most likely to partner with a local government, next most likely to join with another PHA and least likely to join with a State agency.

While all PHAs, regardless of size or location are able and encouraged to join with State agencies, for purposes of estimating burden hours, the PHAs that are assumed to be most likely to partner with States are QPHAs that are located outside of CBSAs.

Under these assumptions, approximately one-third of QPHAs are estimated to use the QHPA template that will be developed by HUD specifically for their use (as lead entities and/or as joint participants), and approximately two-thirds are estimated to enter into joint partnerships using one of the QPHA streamlined assessment "inserts" available under the three existing tools. These estimates are outlined in the following table:

OVERVIEW OF ESTIMATED PHA LEAD ENTITIES AND JOINT PARTICIPANT COLLABORATIONS

	QPHA Outside CBSA	QPHA Inside CBSA	PHA (non-Q)	Total
PHA Assessment Tool				
(PHA acting as lead entity)	x	x	814	814
joint partner using PHA template	x	300	100	400
Local Government Assessment Tool (# of PHA joint collaborations)	x	900	200	1,100
State Assessment Tool (# of PHA joint collaborations)	665	x	x	665
subtotal	665	1,200	1,114	
QPHA template	358	605		963
Total	1,023	1,805		3,942

Solicitation of Specific Comment on the Local Government Assessment Tool

HUD specifically requests comment on the following subject:

HUD has added the following new question (noted in underline)

"Are certain racial/ethnic groups more likely to be residing in one category of publicly supported housing than other categories (public housing, project-based Section 8, Other HUD Multifamily Assisted developments, and Housing Choice Voucher (HCV)) in the jurisdiction? *Compare the racial/ethnic demographics of each category of publicly supported housing for the jurisdiction to the demographics of the same category in the region.*"

The proposed new question is designed to assist program participants in conducting a regional analysis of fair housing issues and contributing factors related to publicly supported housing to inform goal setting and fair housing planning. As a reminder, fair housing issues include segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. Questions are intended to help program participants analyze fair housing issues and the factors that play a significant role in contributing to them.

HUD seeks feedback on the utility of the proposed new question as well as any alternative proposals for analyzing fair housing issues and contributing factors using assisted housing tenant characteristics at a regional level.

HUD seeks to provide questions that will help program participants conduct a meaningful analysis of fair housing issues from a regional perspective to inform goal setting and effective fair housing planning. Commenters should bear in mind the HUD provided data for regional analysis are provided at the CBSA level.

Solicitation of Comment Required by the PRA

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(6) Whether the inclusion of the "inserts" for Qualified PHAs (QPHAs) and small program participants will facilitate collaboration between local governments and these program participants and whether these entities anticipate collaborating to conduct and submit a joint or regional AFH. Please note any changes to these inserts that (a) would better facilitate collaboration; (b) provide for a more robust and meaningful fair housing analysis; and (c) encourage collaboration among these program participants that do not anticipate collaborating at this time.

(7) Whether HUD's change to the structure and content of the questions in the Disparities in Access to Opportunity section with respect to the protected class groups that program participants must analyze is sufficiently clear and will yield a meaningful fair housing analysis. Additionally, HUD specifically solicits comment on whether an appropriate fair housing analysis can and will be conducted if the other protected class groups are assessed only in the "Additional Information" question at the end of the section, as opposed to in each subsection and question in the larger Disparities in Access to Opportunity section. HUD also requests comment on whether it would be most efficient for program participants to have the protected class groups specified in each question in this section. If so, please provide an explanation. Alternatively, HUD requests comment on whether each subsection within the Disparities in Access to Opportunity section should include an additional question related to disparities in access to the particular opportunity assessed based on all of the protected classes under the Fair Housing Act.

(8) Whether HUD should include any other contributing factors or amend any of the descriptions of the contributing factors to more accurately assess fair housing issues affecting program participants' jurisdictions and regions. HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by September 22, 2016 to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–10–A).

HUD encourages interested parties to submit comment in response to these questions.

Dated: August 17, 2016.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–20125 Filed 8–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5966–D–01]

Order of Succession for Office of General Counsel

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the General Counsel for the Department of Housing and Urban Development designates the Order of Succession for the Office of General Counsel. This Order of Succession supersedes all prior orders of succession for the Office of General Counsel, including the Order of Succession published on July 29, 2011.

DATES: *Effective Date:* August 17, 2016.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410–0500; telephone number 202–402–5190. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior orders of succession for the Office of General Counsel, including the Order of Succession notice published on July 29, 2011 (76 FR 45599).

Accordingly, the General Counsel designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the General Counsel, the following officials within the Office of General Counsel are hereby designated to exercise the powers and perform the duties of the Office. No individual who is serving in an office listed below in an acting capacity may act as the General Counsel pursuant to this Order of Succession.

(1) Principal Deputy General Counsel;

(2) Deputy General Counsel for Enforcement and Fair Housing;

(3) Deputy General Counsel for Operations;

(4) Deputy General Counsel for Housing Programs;

(5) Associate General Counsel for Finance and Administrative Law;

(6) Associate General Counsel for Insured Housing;

(7) Associate General Counsel for Assisted Housing and Community Development;

(8) Associate General Counsel for Litigation;

(9) Associate General Counsel for Program Enforcement;

(10) Associate General Counsel for Fair Housing;

(11) Associate General Counsel for Legislation and Regulations;

(12) Associate General Counsel for Ethics, Appeals and Personnel Law;

(13) Regional Counsel, Region IV;

(14) Regional Counsel, Region V.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all prior orders of succession for the Office of General Counsel, including the Order of Succession published on July 29, 2011 (76 FR 45599).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 17, 2016.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2016–20128 Filed 8–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5923–N–04]

Notice of a Federal Advisory Committee Manufactured Housing Consensus Committee Technical Systems Subcommittee Teleconference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC, Technical Systems Subcommittee. The teleconference meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The teleconference meeting will be held on September 27, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). The teleconference numbers are: US toll-free: 1–866–622–8461, Participant Code: 4325434. Webinar: *https://zoom.us/j/929792358;* Meeting ID: 929–792–358.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator and Designated Federal Official (DFO), Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9168, Washington, DC 20410, telephone 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

PUBLIC COMMENT: Citizens wishing to make oral comments on the business of the MHCC are encouraged to register by or before September 21, 2016, by contacting Home Innovation Research Labs, Attention: Kevin Kauffman, 400 Prince Georges Boulevard, Upper Marlboro, MD 20774; or email to: *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the Technical Systems Subcommittee.

TENTATIVE AGENDA:

September 27, 2016

I. Call to Order—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Subcommittee Chair and DFO
III. Roll Call—Administering Organization (AO)
IV. Administrative Announcements—DFO and AO
V. Approval of Minutes from December 2, 2015—Technical Systems Subcommittee Meeting—(See *www.hud.gov/mhs*)
VI. NFPA 70–2014 Recommendation to adopt NFPA 70–2014 including the following Sections in their entirety:
  a. Section 210.8—Ground—Fault Circuit-Interrupter Protection for Personnel
  b. Section 210.12(A)—Arc-Fault Circuit-Interrupter Protection
  c. Section 406.12(A)—Tamper-Resistant Receptacles
  d. Section 550.4(A) & (B)—General Requirements;
  and Section 210.52(E)(3)—Balconies, Decks and Porches as amended (See *www.hud.gov/mhs* Minutes of NFPA 70–2014 Task Force Meeting, May 25, 2016)
VII. New Business:
  - Log 113—Update "ANSI/AHRI Standard 210/240–89" to "ANSI/AHRI 210–240–2008" (See *www.hud.gov/mhs*)
  - Log 114—Update "ANSI Z21.47–1990" to ANSI Z21.47–2012/CSA 2.3—2012" (See *www.hud.gov/mhs*)
VIII. Open Discussion
IX. Public Comments
X. Wrap Up—DFO/AO
XI. Adjourn 4:00 p.m.

Dated: August 17, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–20127 Filed 8–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC01000.16XL1190AF.L10100000.DF0000.241A;4500091856]

Notice of Intent To Amend the Coeur d'Alene Resource Management Plan and To Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Coeur d'Alene Field Office, Coeur d'Alene, Idaho, intends to prepare a Resource Management Plan (RMP) amendment with an associated environmental assessment (EA) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment and associated EA. Comments on issues may be submitted in writing until September 22, 2016. In order to be included in the analysis, all comments must be received prior to this date.

ADDRESSES: You may submit comments on issues and planning criteria related to the Coeur d'Alene RMP amendment/EA by any of the following methods:

- *Web site: http://1.usa.gov/1UCH6h6.*
- *Fax:* 208–769–5050.
- *Email: BLM_ID_CDA_RPP@blm.gov.*
- *Mail:* BLM Coeur d'Alene Field Office, ATTN: CDA–RPP, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

Documents pertinent to this proposal may be examined at the Coeur d'Alene Field Office at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Janna Paronto, Realty Specialist, BLM Coeur d'Alene Field Office, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, phone 208–769–5037, email: *BLM_ID_CDA_RPP@blm.gov.* You can have your name added to our mailing list by contacting the BLM at the above addresses. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Ms. Paronto. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Ms. Paronto. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Coeur d'Alene RMP in accordance with the FLPMA and 43 CFR 1610.5–5. The amendment would classify a 28.69-acre parcel of public land as suitable for lease or conveyance under the Recreation and Public Purposes (R&PP) Act, as amended, and specify that disposal under the Act would serve the public interest. The parcel is located in Kootenai County, Idaho, with the legal description of:

Boise Meridian, Idaho

T. 50 N., R. 4 W.,
  Secs.11 and 14, tract 44 (lying north and east in portions of both sections 11 and 14).

The area described aggregates 28.69 acres.

This amendment would allow the BLM to then consider an application from the City of Coeur d'Alene for lease and conveyance of the above parcel under the R&PP Act to develop a city park. The proposed lease and conveyance will be analyzed in the same EA with the amendment.

The purpose of public scoping is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues identified by BLM personnel include potential effects on cultural and historic resources, recreation and visual resources, fish and aquatic species, wildlife, and vegetation. Preliminary planning criteria for the amendment include: (a) The plan will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, Executive Orders, and management policies of the BLM; (b) Existing planning decisions will remain unchanged unless specifically proposed to be changed; (c) The plan amendment will recognize valid existing rights; and (d) Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration. The planning process will include the consideration of any impacts on Indian trust assets.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the date specified in the **DATES** section above. The BLM will use this NEPA public participation process to help satisfy the public involvement requirements under section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and section 106 of the NHPA.

Federal, State, and local agencies, along with Tribes and other stakeholders who may be interested in or affected by the proposed action, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting that may be held will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

The public is encouraged to identify any management questions and concerns that should be addressed in the plan under the following categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP/Draft EA as to why an issue was placed in category two or three. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in forest management, wildlife and fisheries, archaeology and cultural resources, outdoor recreation, and realty will be involved in the planning process.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Dated: August 16, 2016.

Timothy M. Murphy,

BLM Idaho State Director.

[FR Doc. 2016–20095 Filed 8–22–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–KAHO–21055; PPPWKAHOS0, PPMPSPD1Z.S00000]

Request for Nominations for the Na Hoa Pili O Kaloko-Honokohau National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service, U.S. Department of the Interior, proposes to appoint new members to the Na Hoa Pili O Kaloko-Honokohau (The Friends of Kaloko-Honokohau) (Commission), an advisory commission for Kaloko-Honokohau National Historical Park (Park). The Superintendent of the Park, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the Commission.

DATES: Nominations must be postmarked by September 22, 2016.

ADDRESSES: Nominations should be sent to Tammy Duchesne, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, HI 96740.

FOR FURTHER INFORMATION CONTACT: Jeff Zimpfer, National Park Service, Environmental Protection Specialist, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani St., #14, Kailua Kona, HI 96740, telephone number (808) 329–6881, ext. 1500, or email *jeff_zimpfer@nps.gov.*

SUPPLEMENTARY INFORMATION: The Park was established by Section 505(a) of Public Law 95–625, November 10, 1978, and the Commission was established by Section 505(f) of that same law. The Commission was re-established by Title VII, Subtitle E, Section 7401 of Public Law 111–11, the Omnibus Public Land Management Act of 2009, March 30, 2009. The Commission's current termination date is December 18, 2018.

The purpose of the Commission is to advise the Director of the National Park Service with respect to the historical, archeological, cultural, and interpretive programs of the Park. The Commission is to afford particular emphasis to the quality of traditional native Hawaiian cultural practices demonstrated in the Park.

The Commission consists of nine members, each appointed by the Secretary of the Interior, and four ex officio non-voting members. All nine members of the Commission must be residents of the State of Hawaii, and at least six of those appointees must be native Hawaiians. Native Hawaiians are defined as any lineal descendants of the race inhabiting the Hawaiian Islands prior to the year 1778. At least five members must be appointed from nominations provided by native Hawaiian organizations. The four ex officio members include the Park Superintendent, the Manager, Pacific Islands Office, Pacific West Region Honolulu Office, one person appointed by the Governor of Hawaii, and one person appointed by the Mayor of the County of Hawaii.

The Commission's nine voting members are appointed for five-year terms. No member may serve more than one term consecutively. The Secretary of the Interior designates one member of the Commission to be Chairman.

We are currently seeking nominations provided by native Hawaiian organizations.

Nominations should be typed and must include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Commission and permit the Department of the Interior to contact a potential member.

Members of the Commission serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the Designated Federal Officer, members are allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under 5 U.S.C. 5703.

Individuals who are Federally registered lobbyists are ineligible to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

All nominations must be compiled and submitted in one complete package. Incomplete submissions (missing one or more of the items described above) will not be considered.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–20083 Filed 8–22–16; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit information relating to matters to be addressed in the Commission's 17th report on the impact of the Andean Trade Preference Act (ATPA).

SUMMARY: Section 206 of the ATPA (19 U.S.C. 3204) requires the Commission to report biennially to the Congress and President by September 30 of each reporting year on the economic impact of the Act on U.S. industries and U.S. consumers, as well as on the effectiveness of the Act in promoting drug related crop eradication and crop substitution efforts by beneficiary countries. The Commission prepares these reports under investigation No. 332–352, *Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution.*

DATES: September 6, 2016: Deadline for filing written submissions.

September 30, 2016: Transmittal of Commission report to Congress.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commissions electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Edward Wilson, Project Leader, Office of Economics (202–205–3268, or *Edward.Wilson@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Peg O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries, which produce articles that are like, or directly competitive with, articles being imported under the Act from beneficiary countries;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on such domestic industries; and

(3) The estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

The President's authority to provide preferential treatment under the ATPA provisions expired on July 31, 2013. During the period covered by this report, calendar years 2014 and 2015, no importations entering the United States should have received preferential treatment under the ATPA program. In addition, two of the four countries originally eligible for designation for ATPA benefits, Peru and Colombia, entered into free trade agreements with the United States prior to July 31, 2013, and were no longer eligible for designation. The initial notice announcing institution of this investigation for the purpose of preparing these reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The Commission will submit its report by September 30, 2016.

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., September 6, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's *Handbook on Filing Procedures* require that interested parties file documents *electronically* on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission will not include any confidential business information in the report that it sends to the Congress or the President or that it makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries Of Written Submissions: The Commission intends to publish summaries of the positions of interested persons. Persons wishing to have a summary of their position included in the report should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: August 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–20079 Filed 8–22–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Sleep-Disordered Breathing Treatment Mask Systems and Components Thereof, DN 3169;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ResMed Corp; ResMed Inc.; and ResMed Ltd. on August 17, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment mask systems and components thereof. The complaint names as respondents Fisher & Paykel Healthcare Limited of New Zealand; Fisher Paykel Healthcare, Inc. of Irvine, CA; and Fisher & Paykel Healthcare Distribution Inc. of Irvine, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3169") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–20082 Filed 8–22–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0080]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Notification of Change of Mailing or Premise Address

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 39956, on June 20, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 22, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shawn Stevens, ATF Industry Liaison, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405, at telephone: 304–616–4421. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: During the term of a license or permit, a licensee or permittee may move his business or operations to a new address at which he intends to regularly carry on his business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall notify the Chief, Federal Explosives Licensing Center of the change. This collection of information is contained in 27 CFR 555.54.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will take 10 minutes to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 170 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: August 18, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20077 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0018]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Federal Firearms License—ATF F 7(5310.12)/7 CR (5310.16)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection OMB 1140–0018 (Application for Federal Firearms License—ATF Form 7 (5310.12) is being revised and combined with OMB 1140–0038 (Application for Federal Firearms License (Collector of Curios and Relics)—ATF Form 7 CR (5310.16); thereby eliminating the need for a separate application form for Type 03, Collector of Curios and Relics FFL (1140–0038). The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until October 24, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405 or via email at: *tracey.robertson@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection* (check justification or form OMB 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Federal Firearms License.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF F 7(5310.12)/7 CR (5310.16).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Businesses or other for-profit.

Other (if applicable): Individuals or households.

Abstract: The law of 18 U.S.C. 923(a)(1), requires a person wishing to transport, ship, or receive firearms in interstate or foreign commerce to pay a fee, to file an application and to obtain a license before engaging in business. ATF F 5310.12/7 CR 5310.16 will be for the purpose of ensuring this collection of information is necessary to insure that the person who wishes to be licensed as required by section 923 meets the requirements of the section for the license. Additionally, this form will be used by the public when applying for a Federal firearms license to collect curios and relics to facilitate a personal collection in interstate and foreign commerce. The information requested on the form establishes eligibility for all license types.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 15,000 respondents will take 60 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: August 17, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20051 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Charter Communications, Inc., et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States of America* v. *Charter Communications, Inc., et al.*, Civil Action No. 1:16–cv–00759, together with the Response of the United States to Public Comment.

Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Charter Communications, Inc., Time Warner Cable Inc, Advance/Newhouse Partnership, and Bright House Networks, LLC,* Defendants.

Civil Action No. 1:16–cv–00759 (RCL)

RESPONSE OF PLANTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby files the single public comment received concerning the proposed Final Judgment in this case and the United States's response to the comment. After careful consideration of the submitted comment, the United States continues to believe that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register** pursuant to 15 U.S.C. 16(d).

I. PROCEDURAL HISTORY

On May 23, 2015, Charter Communications, Inc. ("Charter") and Time Warner Cable, Inc. ("TWC"), two of the largest cable companies in the United States, agreed to merge in a deal valued at over $78 billion. In addition, Charter and Advance/Newhouse Partnership, which owns Bright House Networks, LLC ("BHN"), announced that Charter would acquire BHN for $10.4 billion, conditional on the sale of TWC to Charter. On April 25, 2015, the United States filed a civil antitrust Complaint seeking to enjoin Charter from acquiring TWC and BHN. The United States alleged in the Complaint that the proposed acquisition likely would substantially lessen 'competition in numerous local markets for the timely distribution of professional, full-length video programming to residential customers ("video programming distribution") throughout the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment that would settle the case. On May 10, 2016, the United States filed a Competitive Impact Statement ("CIS") that explains how the proposed Final Judgment is designed to remedy the likely anticompetitive effects of the proposed acquisition. As required by the Tunney Act, the United States published the proposed Final Judgment and CIS in the **Federal Register** on May 17, 2016. *See* 81 FR 30550. In addition, the United States ensured that a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments, were published in *The Washington Post* for seven days from May 13 through 19, 2016. The 60-day period for public comments ended on July 18, 2016. The United States received one comment, which is described below and attached as Exhibit 1.

II. THE INVESTIGATION AND THE PROPOSED SETTLEMENT

The proposed Final Judgment is the culmination of more than ten months of investigation by the Antitrust Division of the United States Department of Justice ("Department"). The Department opened an investigation soon after the transactions were announced, and conducted a comprehensive review of the potential implications of the transactions. The Department interviewed dozens of companies and individuals involved in the industry, obtained deposition testimony, required Defendants to provide the Department with extensive data and responses to numerous interrogatories, and collected millions of business documents from the Defendants and relevant third parties. The Department also consulted extensively with the Federal Communications Commission, which was conducting a separate statutory review of the acquisitions, to ensure that the agencies conducted their reviews in a coordinated and complementary fashion and created remedies that were both comprehensive and consistent.

Although Charter, TWC, and BHN do not compete to offer residential services in the same local geographic areas, the Department's investigation found that the proposed acquisitions were likely to substantially lessen competition because they would increase Charter's incentive and ability to use its bargaining leverage to make it more difficult for online video distributors to compete effectively. In particular, the Department alleged in its Complaint that the merger would give Charter greater incentive and ability to use restrictive clauses in its contracts with video programmers to prevent online video distributors from obtaining important video programming content.

The proposed Final Judgment is designed to address the anticompetitive effects identified in the Complaint by prohibiting Charter from entering into or enforcing certain restrictive contract provisions that may be likely to substantially lessen competition. In addition, Charter is prohibited from retaliating against video programmers for licensing content to online providers that compete with Charter. Charter is also required to provide certain regular reports to the Department, so that the Department can monitor whether a separate remedy imposed by the Federal Communications Commission is successfully preventing Charter from using its bargaining leverage over internet interconnection to harm online video providers.

III. STANDARD OF JUDICIAL REVIEW

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.*, No. 08–cv–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (discussing nature of review of consent judgment under the Tunney Act; inquiry is limited to "whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the Complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)). Instead, courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement in "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, "the court 'must accord deference to the government's predictions about the efficacy of its remedies.'" *United States* v. *U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (quoting *SBC Commc'ns*, 489 F. Supp. at 17). *See also Microsoft*, 56 F.3d at 1461 (noting that the government is entitled to deference as to its "predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case"); *United States* v. *Morgan Stanley*, 881 F. Supp. 2d 563, 567–68 (S.D.N.Y. 2012) (explaining that the government is entitled to deference in choice of remedies).

Courts "may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17. Rather, the ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461. Accordingly, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also United States* v. *Apple, Inc.* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012). And, a "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest." *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotations omitted); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

In its 2004 amendments to the Tunney Act,[1] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11; *see also United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) ("[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone."); *US Airways*, 38 F. Supp. 3d at 76 (same).

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[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

IV. Summary of Public Comment and Response of the United States

During the 60-day comment period, the United States received one comment from Amy R. Bloomfield, a Charter customer in North Carolina. Ms. Bloomfield generally describes her poor experience as a Charter customer. Ms. Bloomfield opposes the merger because "Time Warner [Cable] is a decent company; Charter is not."

The United States appreciates receiving Ms. Bloomfield's comment. Over the course of its ten-month investigation, the United States carefully considered the competitive effects of Charter's proposed acquisitions of TWC and BHN, including any possible effects on customer service. As a result of its investigation, the United States concluded that these acquisitions were likely to reduce competition only insofar as they increased the incentive and ability of Charter to foreclose competition from nascent online video providers. Therefore, the Department's Complaint only addressed that issue. It is well-settled that comments, such as Ms. Bloomfield's comment, that are unrelated to the concerns identified in the complaint are beyond the scope of this Court's Tunney Act review. *See, e.g., SBC Commc'ns,* 489 F. Supp. 2d at 14 (holding that "a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made' ") (quoting *Microsoft,* 56 F.3d at 1459) (emphasis in original); *see also US Airways,* 38 F. Supp. 3d at 76. Accordingly, Ms. Bloomfield's comment does not provide a basis for rejecting the proposed Final Judgment.

V. Conclusion

After reviewing the public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published in the **Federal Register**.

Dated: August 16, 2016.

Respectfully submitted,

/s/

Robert Lepore,

United States Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7000, Washington, DC 20530, Tel.: (202) 532–4928, Email: robert.lepore@usdoj.gov.

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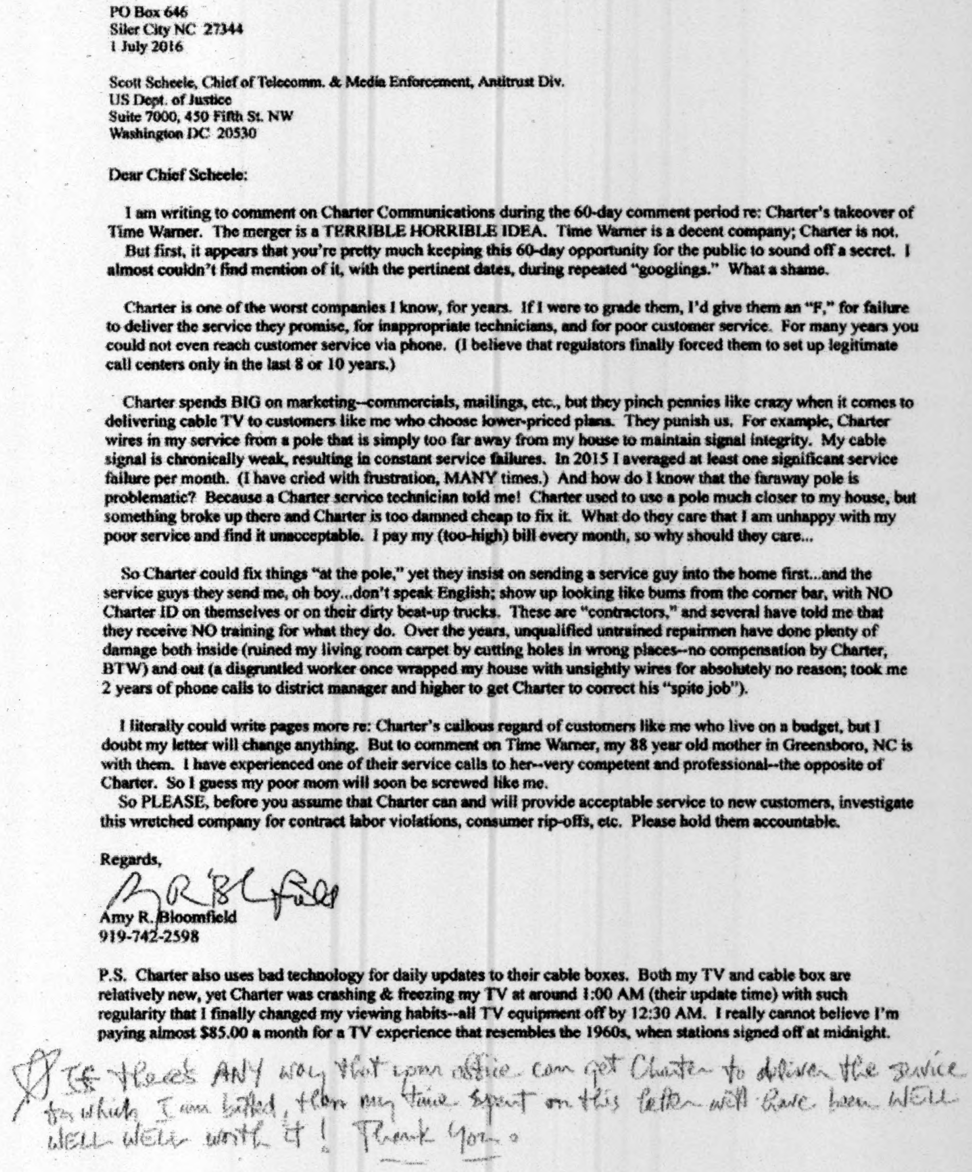

PO Box 646
Siler City NC 27344
1 July 2016

Scott Scheele, Chief of Telecomm. & Media Enforcement, Antitrust Div.
US Dept. of Justice
Suite 7000, 450 Fifth St. NW
Washington DC 20530

Dear Chief Scheele:

I am writing to comment on Charter Communications during the 60-day comment period re: Charter's takeover of Time Warner. The merger is a TERRIBLE HORRIBLE IDEA. Time Warner is a decent company; Charter is not.

But first, it appears that you're pretty much keeping this 60-day opportunity for the public to sound off a secret. I almost couldn't find mention of it, with the pertinent dates, during repeated "googlings." What a shame.

Charter is one of the worst companies I know, for years. If I were to grade them, I'd give them an "F," for failure to deliver the service they promise, for inappropriate technicians, and for poor customer service. For many years you could not even reach customer service via phone. (I believe that regulators finally forced them to set up legitimate call centers only in the last 8 or 10 years.)

Charter spends BIG on marketing--commercials, mailings, etc., but they pinch pennies like crazy when it comes to delivering cable TV to customers like me who choose lower-priced plans. They punish us. For example, Charter wires in my service from a pole that is simply too far away from my house to maintain signal integrity. My cable signal is chronically weak, resulting in constant service failures. In 2015 I averaged at least one significant service failure per month. (I have cried with frustration, MANY times.) And how do I know that the faraway pole is problematic? Because a Charter service technician told me! Charter used to use a pole much closer to my house, but something broke up there and Charter is too damned cheap to fix it. What do they care that I am unhappy with my poor service and find it unacceptable. I pay my (too-high) bill every month, so why should they care...

So Charter could fix things "at the pole," yet they insist on sending a service guy into the home first...and the service guys they send me, oh boy...don't speak English; show up looking like bums from the corner bar, with NO Charter ID on themselves or on their dirty beat-up trucks. These are "contractors," and several have told me that they receive NO training for what they do. Over the years, unqualified untrained repairmen have done plenty of damage both inside (ruined my living room carpet by cutting holes in wrong places--no compensation by Charter, BTW) and out (a disgruntled worker once wrapped my house with unsightly wires for absolutely no reason; took me 2 years of phone calls to district manager and higher to get Charter to correct his "spite job").

I literally could write pages more re: Charter's callous regard of customers like me who live on a budget, but I doubt my letter will change anything. But to comment on Time Warner, my 88 year old mother in Greensboro, NC is with them. I have experienced one of their service calls to her--very competent and professional--the opposite of Charter. So I guess my poor mom will soon be screwed like me.

So PLEASE, before you assume that Charter can and will provide acceptable service to new customers, investigate this wretched company for contract labor violations, consumer rip-offs, etc. Please hold them accountable.

Regards,

Amy R. Bloomfield
919-742-2598

P.S. Charter also uses bad technology for daily updates to their cable boxes. Both my TV and cable box are relatively new, yet Charter was crashing & freezing my TV at around 1:00 AM (their update time) with such regularity that I finally changed my viewing habits--all TV equipment off by 12:30 AM. I really cannot believe I'm paying almost $85.00 a month for a TV experience that resembles the 1960s, when stations signed off at midnight.

If there's ANY way that your office can get Charter to deliver the service for which I am billed, then my time spent on this letter will have been WELL WELL WELL worth it! Thank You.

[FR Doc. 2016–20066 Filed 8–22–16; 8:45 am]

BILLING CODE C

DEPARTMENT OF JUSTICE

Meeting of the NDCAC Executive Advisory Board

AGENCY: Department of Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Department of Justice's National Domestic Communications Assistance Center's (NDCAC) Executive Advisory Board (EAB). The NDCAC EAB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA).

DATES: The EAB will meet in open session from 12:00 p.m. until 3:00 p.m. on September 21, 2016.

ADDRESSES: The meeting will take place at 5000 Seminary Rd., Alexandria, VA 22311. Entry into the meeting room will begin at 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Alice Bardney-Boose, Designated Federal Officer, National Domestic Communications Assistance Center, Department of Justice, by email at *NDCAC@ic.fbi.gov* or by phone at (540) 361–4600.

SUPPLEMENTARY INFORMATION: Agenda: The meeting will be called to order at 12:00 p.m. by EAB Chairman Peter Modafferi. All EAB members will be introduced and background of the EAB will be provided by EAB Vice Chairman Preston Grubbs. The EAB will receive a presentation on the National Domestic Communications Assistance Center; a presentation of Department of Justice's Privacy Principles; a status report from its Administrative sub-committee; and additional sub-committee(s) will be established. Note: Agenda items are subject to change.

The purpose of the EAB is to provide advice and recommendations to the Attorney General or designee, and to the Director of the NDCAC that promote public safety and national security by advancing the NDCAC's core functions: Law enforcement coordination with respect to technical capabilities and solutions, technology sharing, industry relations, and implementation of the Communications Assistance for Law Enforcement Act (CALEA). The EAB consists of 15 voting members from Federal, State, local and tribal law enforcement agencies. Additionally, there are two non-voting members as follows: A federally-employed attorney assigned full time to the NDCAC to serve as a legal advisor to the EAB, and the DOJ Chief Privacy Officer or designee to ensure that privacy and civil rights and civil liberties issues are fully considered in the EAB's recommendations. The EAB is composed of eight State, local, and/or tribal representatives and seven federal representatives.

Written Comments: Any member of the public may submit written comments with the EAB. Written comments must be provided to Ms. Alice Bardney-Boose, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to EAB members for their consideration prior to the meeting. Written comments must be submitted to *NDCAC@ic.fbi.gov* on or before September 14, 2016. In accordance with the FACA, all comments shall be made available for public inspection. Commenters are not required to submit personally identifiable information (such as name, address, etc.). Nevertheless, if commenters submit personally identifiable information as part of the comments, but do not want it made available for public inspection, the phrase "Personally Identifiable Information" must be included in the first paragraph of the comment. Commenters must place all personally identifiable information not to be made available for public inspection in the first paragraph and identify what information is to be redacted. Privacy Act Statement: Comments are being collected pursuant to the FACA. Any personally identifiable information included voluntarily within comments, without a request for redaction, will be used for the limited purpose of making all documents available to the public pursuant to FACA requirements.

Registration: Individuals and entities who wish to attend the public meeting are required to pre-register for the meeting on-line by clicking the registration link found at: *http://ndcac-eab.eventbee.com.* Registrations will be accepted on a space available basis. Attendees must bring registration confirmation (*i.e.,* email confirmation) to be admitted to the meeting. Privacy Act Statement: The information requested on the registration form and required at the meeting is being collected and used pursuant to the FACA for the limited purpose of ensuring accurate records of all persons present at the meeting, which records may be made publicly available. Providing information for registration purposes is voluntary; however, failure to provide the required information for registration purposes will prevent you from attending the meeting.

Online registration for the meeting must be completed on or before 5:00 p.m. (EST) September 7, 2016. Anyone requiring special accommodations should notify Ms. Bardney-Boose at least seven (7) days in advance of the meeting or indicate your requirements on the online registration form.

Alice Bardney-Boose,

Designated Federal Officer, National Domestic Communication Assistance Center, Executive Advisory Board.

[FR Doc. 2016–20126 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0100]

Agency Information Collection Activities; Proposed eCollection; eComments Requested Collection of Information on Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to Section 4(A)(1)(C) of the International Claims Settlement Act of 1949, as Amended, 22 U.S.C. 1623(a)(1)(C)

AGENCY: Foreign Claims Settlement Commission, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Foreign Claims Settlement Commission (Commission), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 39967, on June 20, 2016, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Jeremy LaFrancois, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- —Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- —Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- —Enhance the quality, utility, and clarity of the information to be collected; and
- —Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension without change.

(2) The title of the form/collection: Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to Section 4(a)(1)(C) of the International Claims Settlement Act of 1949.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: FCSC–1. Foreign Claims Settlement Commission, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals. Other: Corporations. Information will be used

as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals, referred to the Commission by the Department of State pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. § 1623(A)(1)(C).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 500 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total annual public burden associated with this application is 1,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: August 18, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20109 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0084]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Extension With Change, of a Previously Approved Collection

Application for Approval as a Nonprofit Budget and Credit Counseling Agency

AGENCY: Executive Office for United States Trustees, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Executive Office for United States Trustees (EOUST) will be submitting an extension of information collection, through its Application for Approval as a Nonprofit Budget and Credit Counseling Agency, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 38220, on June 13, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 22, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection with instructions, of if you need additional information, please contact Carrie Weinfeld, Department of Justice, EOUST, at 441 G Street NW., Suite 6150, Washington DC 205330 (phone: (202) 307–1399). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Approval as a Nonprofit Budget and Credit Counseling Agency (Application).

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Executive Office for United States Trustees.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Agencies that wish to offer credit counseling services pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), and codified at 11 U.S.C. 109(h) and 111, and Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees, 78 FR 16,138 (March 14, 2013) (Rule).

The BAPCPA requires any individual who wishes to file for bankruptcy to obtain credit counseling, within 180 days before filing for bankruptcy relief, from a nonprofit budget and credit counseling agency that has been approved by the United States Trustee. The Application collects information from such agencies in order to ensure compliance with the law and the Rule.

5. *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 122 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 560 hours.

If additional information is required contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 17, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20052 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0111]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Quality of Service Survey

AGENCY: Community Relations Service (CRS), Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Community Relations Service (CRS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 81 FR 39278, on June 16, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 22, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gilbert Moore, Deputy Director, Community Relations Service, 600 E Street NW., Suite 6000, Washington, DC 20530. Office Phone: 202–305–2925. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- —Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- —Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- —Enhance the quality, utility, and clarity of the information to be collected; and/or
- —Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* CRS "Quality of Service" Survey.

3. *The agency form number:* CRS 1103–0111.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and local elected officials, law enforcement executives, Education Administrators, community leaders, and others who receive CRS services.

Abstract: The CRS Survey will be provided to those who engage in CRS services as our work concludes in a case. The result of the Survey, in aggregate, will be used to ensure that CRS is providing quality services, and to identify needed modifications and enhancements.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Survey will be distributed to key participants in CRS cases at the conclusion of each case. This is estimated to be five people per case. CRS conducts approximately 500 cases per year. As such, CRS anticipates distributing approximately 2,500 surveys per year. Since the Survey is voluntary, CRS anticipates a response rate of approximately ten percent, which would result in 250 responses annually. It is estimated that completing the Survey will take less than three minutes per respondent. The estimated total public burden hours associated with this collection is 12.5 hours per fiscal year.

6. *An estimate of the total public burden (in hours) associated with the collection:* 2,282.6 annual burden hours. There are an estimated 125 annual total CRS burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 18, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20108 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–17–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0085]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Extension With Change, of a Previously Approved Collection Application for Approval as a Provider of a Personal Financial Management Instructional Course

AGENCY: Executive Office for United States Trustees, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Executive Office for United States Trustees (EOUST) will be submitting an extension of information collection, through its Application for Approval as a Provider of a Personal Financial Management Instructional Course, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 38221, on June 13, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 22, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection with instructions, of if you need additional information, please contact Carrie Weinfeld, Department of Justice, EOUST, at 441 G Street NW., Suite 6150, Washington, DC 205330 (phone: (202) 307–1399). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Approval as a Nonprofit Budget and Credit Counseling Agency (Application).

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Executive Office for United States Trustees.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals and entities that wish to offer instructional courses to debtors concerning personal financial management pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), and codified at 11 U.S.C. 109(h) and 111, and Application Procedures and Criteria for Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees, 78 FR 16,159 (March 14, 2013) (Rule).

The BAPCPA requires individual debtors in bankruptcy cases to complete a personal financial management instructional course from a provider that has been approved by the United States Trustee as a condition of receiving a discharge. The Application collects information from such providers in order to ensure compliance with the law and the Rule.

5. *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 195 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours. In addition, it is estimated that approximately 966,868 debtors will complete a survey evaluating the effectiveness of an instructional course in approximately one (1) minute.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 17,014.5 hours; the applicants' burden is 900 hours and the debtors' burden is 16,114.5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 17, 2017.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20053 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On August 12, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States* v. *Aerojet Rocketdyne Holdings, Inc.,* Civil Action No. 3:16-cv-02022.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and the Clean Water Act. The United States' complaint names the following parties as defendants: Aerojet Rocketdyne Holdings, Inc. (fka Gencorp Inc.); Allied Waste Industries, Inc.; E.I. DuPont de Nemours and Company; Honeywell International, Inc.; Illinois Tool Works, Inc.; United Technologies Corporation; Grand Trunk Western Railroad Company; Perstorp Polyols Inc.; Varta Microbattery Inc.; and The Mosaic Company (fka MOS Holdings Inc.). The State of Ohio filed a related lawsuit, named *State of Ohio, ex rel. DeWine* v. *Aerojet Rocketdyne Holdings, Inc.* et al., Civil Action No. 3:16-cv-02027 (N.D. Ohio), under CERCLA, the Clean Water Act, and its common law public trust doctrine. The State names as Defendants the Defendants in the United States' complaint, plus the United States of America, the United States Navy, Air Force, Army, and the Department of Commerce ("Settling Federal Agencies").

The complaints request recovery of natural resource damages ("NRD"), including costs of restoration and injured, destroyed, or lost natural resources resulting from releases of hazardous substances into an area defined in the Consent Decree as the Ottawa River Assessment Area, and assessment costs. All of the Defendants signed the consent decree. The non-federal Defendants agree to restore property located adjacent to the Cedar Point National Wildlife Refuge in Ottawa County, estimated to cost $1,100,000, including the price of acquiring the property itself, which has already occurred, then donate the property to the U.S. Department of the Interior ("DOI"), Fish and Wildlife Service ("FWS"). They will also pay $250,000 for additional restoration projects to be determined by the FWS and the Ohio Environmental Protection Agency ("Ohio EPA") and pay a total of $1,311,372 in past NRD assessment costs, $891,330 to the United States and $420,042 to the State of Ohio. The Settling Federal Agencies will pay $270,623.79, including $181,318.33 to DOI for past NRD assessment costs, $28,579.46 to the State for past NRD assessment costs, and $60,726.69 for future restorations projects to be determined by the FWS and Ohio EPA.

In return, the United States agrees not to sue the non-federal defendants, and DOI and FWS agree not to take administrative action against the Settling Federal Agencies, for NRD under CERCLA, the Clean Water Act, or federal statutory or state statutory or common law. The State agrees not to sue the non-federal Defendants and the Settling Federal Agencies for NRD under CERCLA, the Clean Water Act, or federal statutory or state statutory or common law. The non-federal settling Defendants agree not to sue the State or the United States (including the Settling Federal Agencies) pursuant to CERCLA, the Clean Water Act, or federal statutory or state statutory or common law for NRD or any response actions undertaken in the Ottawa River Assessment Area pursuant to the Great Lakes Legacy Act.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Ohio* v. *Aerojet Rocketdyne Holdings, Inc. et al.*, D.J. Ref. No. 90–11–3–09090. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $42.50 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree. For a paper copy without the exhibits and signature pages, the cost is $13.25.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–20076 Filed 8–22–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,248]

Exal Corporation, Including On-Site Leased Workers from Alliance Industrial Solutions and Ryan Alternative Staffing, Youngstown, Ohio; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 22, 2016, the state workforce office requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for worker adjustment assistance applicable to workers and former workers of Exal Corporation, including on-site leased workers from Alliance Industrial Solutions and Ryan Alternative Staffing, Youngstown, Ohio. The determination was issued on May 26, 2016 and the Notice of Determination was published in the **Federal Register** on June 28, 2016 (81 FR 42000).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports by the workers' firm or its customers, nor was there a foreign shift or acquisition by the workers' firm or its customers. In addition, neither the workers' firm nor its customers reported imports of articles like or directly competitive with articles for which the article produced by the workers' firm were directly incorporated.

The request for reconsideration asserts that the subject firm and customer continues to import from a foreign location like or directly competitive articles while decreasing articles produced within the United States. The request for reconsideration included new facts.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of July, 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–20046 Filed 8–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than September 2, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of August 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[46 TAA Petitions instituted between 7/11/16 and 7/22/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92003	Hewlett Packard Enterprise (State/One-Stop)	Plano, TX	07/11/16	07/08/16
92004	Atlas Copco Hurricane LLC (Workers)	Franklin, IN	07/11/16	07/11/16
92005	CTS Corporation (Company)	Elkhart, IN	07/11/16	07/08/16
92006	Thermo Fisher Scientific (State/One-Stop)	Chelmsford, MA	07/11/16	06/29/16
92007	DSI Underground Systems (Workers)	Martinsburg, WV	07/12/16	07/11/16
92008	Perceptive (Parexel) Informatics (State/One-Stop)	Billerica, MA	07/12/16	07/11/16
92009	Epicor Software Corporation (Workers)	Westminster, CO	07/13/16	07/12/16
92010	Atos IT Solutions and Services (State/One-Stop)	Redmond, WA	07/13/16	07/12/16
92011	GateHouse Media (Lawyers Weekly LLC/Virginia Publishing), Customer Service (State/One-Stop).	Boston, MA	07/13/16	07/11/16
92012	International Business Machines Corporation (IBM) (State/One-Stop)	Schaumburg and the Atlanta locations, IL.	07/14/16	07/13/16
92013	Fenton Art Glass Company (Workers)	Williamstown, WV	07/15/16	07/08/16
92014	Chrysler Dundee Engine Plant (Workers)	Dundee, MI	07/15/16	07/13/16
92015	Mattel, Inc., Mattel Global Shared Service Solutions (MGSSS) (State/One-Stop).	East Aurora, NY	07/15/16	07/13/16
92016	Erie Bolt Company (EBC) (Union)	Erie, PA	07/15/16	07/14/16
92017	D & L Oil Tool (State/One-Stop)	Tulsa, OK	07/15/16	07/14/16
92018	Computer Sciences Corporation (CSC) (State/One-Stop)	Tysons, VA	07/15/16	07/14/16
92019	Halliburton (Wireline and Perforating) (State/One-Stop)	Houston, TX	07/15/16	07/14/16
92020	American Light Bulb Manufacturing Inc. (State/One-Stop)	Mullins, SC	07/18/16	07/15/16
92021	Sanford LP (Company)	Shelbyville, TN	07/19/16	07/18/16
92022	Indiana Tool & Manufacturing Company, Inc. (Company)	Plymouth, IN	07/19/16	07/19/16
92023	Alcatel-Lucent Nokia (State/One-Stop)	Naperville, IL	07/19/16	07/18/16
92024	TEKsystems (State/One-Stop)	El Segundo, CA	07/19/16	07/18/16
92025	Conmet/Consolidated Metco Inc. (State/One-Stop)	Clackamas, OR	07/19/16	07/18/16
92026	Daimler Trucks North America, LLC (State/One-Stop)	Portland, OR	07/19/16	07/18/16
92027	McDonald's Corporation (State/One-Stop)	Columbus, OH	07/19/16	07/18/16
92028	Alcatel-Lucent Enterprise (ALE) (State/One-Stop)	New Province, NJ	07/19/16	07/18/16
92029	Control Devices, LLC formerly Flexi-Hinge Valve Co., Inc. (Workers)	Fairview, PA	07/20/16	07/19/16
92030	Blue Scope Buildings of North America/Blue Scope Steel (State/One-Stop).	Kansas City, MO	07/20/16	07/19/16
92031	JP Morgan Chase, Hedge Fund Service Division (State/One-Stop)	Brooklyn, NY	07/20/16	07/19/16
92032	Ralph Lauren (State/One-Stop)	New York, NY	07/20/16	07/19/16
92033	Viskase Companies, Inc. (Company)	Osceola, AR	07/20/16	07/19/16
92034	TTM/Viasystems Technologies Corp., LLC (State/One-Stop)	Forest Grove, OR	07/20/16	07/19/16
92035	Federal Republic of Germany (Company)	Holloman Air Force Base, NM	07/21/16	07/20/16
92036	ITW Ark-Les (Company)	New Berlin, WI	07/21/16	07/20/16
92037	Specialty/Euclid Vidaro (Workers)	Asheboro, NC	07/21/16	07/20/16
92038	Berry Plastics (Company)	Dunkirk, NY	07/21/16	07/20/16
92039A	Norandal USA, Inc. (Company)	Salisbury, NC	07/21/16	07/20/16
92039	Norandal USA, Inc. (Company)	Huntington, TN	07/21/16	07/20/16
92040	Willamette Egg Farms (State/One-Stop)	Canby, OR	07/22/16	07/21/16
92041	Verizon Communications/Enterprise Solutions/Verizon Business Order Pro (State/One-Stop).	Colorado Springs, CO	07/22/16	07/21/16
92042	Shimadzu USA Manufacturing Inc. (State/One-Stop)	Canby, OR	07/22/16	07/21/16
92043	SeaChange International, Inc. (State/One-Stop)	Portland, OR	07/22/16	07/21/16
92043A	SeaChange International, Inc. (State/One-Stop)	Milpitas, CA	07/22/16	07/21/16
92044	Northwest Pipe Company (Company)	Denver, CO	07/22/16	07/21/16
92045	CH2M (State/One-Stop)	Portland, OR	07/22/16	07/21/16
92046	Blueprint Consulting Services (State/One-Stop)	Irving, TX	07/22/16	07/22/16

[FR Doc. 2016–20047 Filed 8–22–16; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,218]

Mesabi Radial Tire Company, 1801 5th Avenue East, Hibbing, Minnesota; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 29, 2016, the state workforce office requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for worker adjustment assistance applicable to workers and former workers of Mesabi Radial Tire Company, 1801 5th Avenue East, Hibbing, Minnesota. The determination was issued on January 12, 2016.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that imports did not increase, and that the workers' firm does not import wholesale or repair services. Further, the firm did not shift the supply of wholesale or repair services or like or directly competitive services to a foreign country or acquire wholesale or repair services or like or directly competitive services from a foreign country. Further, the firm is not a Supplier to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a). The services supplied by the workers firm were not used in the production of an article, iron ore. The services supplied were used within the tools/equipment used to mine for ore. Finally, the firm does not act as a Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a). The workers' firm was not engaged in value-added finishing processes used in the production of an article or supply of a service.

The request for reconsideration states that this determination is erroneous and that the subject firm should be considered to be a downstream supplier because without their products steel cannot be manufactured. The request also included additional information relating to this statement.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of July, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–20049 Filed 8–22–16; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *July 11, 2016 through July 22, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
86,093	EarthLink Shared Services, Care and Repair Division, Pro Services	Rochester, NY	June 15, 2014.
90,103	Erickson Helicopters Inc., Erickson Incorporated, Accountemps/Robert Half International, Inc., etc.	McMinnville, OR	January 1, 2014.
90,103A	Erickson Incorporated, Accountemps/Robert Half International, Inc., Accounting Principals, etc.	Central Point, OR	January 1, 2014.
90,103B	Erickson Incorporated, Accountemps/Robert Half International, Inc., Accounting Principals, etc.	Medford, OR	January 1, 2014.
90,216	iMedX, Inc., Amphion Medical Solutions	Atlanta, GA	January 1, 2014.
90,216A	Amphion Medical Solutions	Madison, WI	January 1, 2014.
91,304	Solaicx, SunEdison, Inc., Express Employment Professionals	Portland, OR	January 7, 2015.
91,690	MEMC Pasadena, Inc., SunEdison, Inc., Kelly Services, Robert Half	Pasadena, TX	March 22, 2015.
91,727	Cargill, Inc., U.S. Information Technology (IT) Division, Dahl Consulting, Inc., etc.	Hopkins, MN	April 21, 2015.
91,807	Cardone Industries, Inc., Tridonex	Philadelphia, PA	May 12, 2015.
91,864	Quantum Medical Imaging, LLC, Carestream Health	Ronkonkoma, NY	May 26, 2015.
91,881	WESTAK of Oregon, Inc., WESTAK, Inc., Express Services and Flex Force Personnel Services.	Forest Grove, OR	June 3, 2015.
91,923	Experian, Global Security Administration, Allegis Global Solutions	Allen, TX	June 14, 2015.
91,937	Brookfield Global Relocation Services, LLC, Aerotek, Inc., AppleOne, HR Finders (AZ Tech Finders), etc.	Scottsdale, AZ	June 20, 2015.
91,948	Cascades Holding USA, Inc., Cascades Tissue Group, Sales Inc. Division, Accounting Department.	Waterford, NY	June 22, 2015.
91,954	Siemens Shared Services, Talent Services Division	Orlando, FL	June 23, 2015.
91,958	ClearOne Inc., Aerotek and TempForce	Alachua, FL	June 22, 2015.
91,966	Transitions Optical, Inc., Kelly Services, ResourceMFG, Executive Alliance, etc.	Pinellas Park, FL	June 27, 2015.
91,985	Dresser, Inc., General Electric Oil & Gas, Kelly Temporary Services, YOH Exchange, etc.	Pineville, LA	July 5, 2015.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,527	Venango Steel, Inc., All Seasons Temporaries	Franklin, PA	February 18, 2015.
91,959	Madden Timberlands, Inc	Old Town, ME	June 24, 2015.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
91,115	SCFM Compression Systems, Inc	Tulsa, OK.	
91,151	The Directional Drilling Company, Q Directional Drilling LLC	Casper, WY.	
91,189	Diversified Well Logging, LLC, DWL Holding, LLC	Corpus Christi, TX.	
91,225	XALT Energy, LLC, Adecco and VP Total Solutions	Midland, MI.	
91,366	Convergys Corporation	Omaha, NE.	
91,372	WorleyParsons Group, Inc., Western Ops Division, WorleyParsons Corp., Energy Resourcing.	Arcadia, CA.	
91,372A	WorleyParsons Group, Inc., Western Ops Division, WorleyParsons Corp., Energy Resourcing.	Monrovia, CA.	
91,382	Independent Pattern Shop	Erie, PA.	
91,482	Panasonic Eco Solutions Solar America, LLC, Panasonic Corporation of North America	Salem, OR.	
91,600	Langeloth Metallurgical Company, Thompson Creek Metals Company	Langeloth, PA.	
91,622	General Electric Lighting Mattoon Lamp Plant, GE Lighting (US Lighting LLC)	Mattoon, IL.	

TA–W No.	Subject firm	Location	Impact date
91,668	Cengage Learning, Custom Production Division, Cengage Learning Holdings II LP	Mason, OH.	

Determinations Terminating Investigations of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
91,836	Gates Corporation	Elizabethtown, KY	
91,956	ITW Filtration Products	Mazon, IL	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
92,019	Halliburton (Wireline and Perforating)	Houston, TX	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
91,691	MEMC Pasadena, Inc., SunEdison, Inc	Pasedena, TX	
91,996	Electrofilm Manufacturing Company LLC, Envirotech LLC, Aerotek Commercial Staffing, Ronin Staffing LLC, etc.	Valencia, CA	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
92,017	D & L Oil Tool	Tulsa, OK	

I hereby certify that the aforementioned determinations were issued during the period of *July 11, 2016 through July 22, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 11th day of February 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–20050 Filed 8–22–16; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16; NRC–2016–0177]

Virginia Electric and Power Company; North Anna Power Station Independent Spent Fuel Storage Installation; Renewal of Special Nuclear Materials License

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt; notice of opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Special Nuclear Materials (SNM) License No. SNM–2507, which currently authorizes Virginia Electric and Power Company (Dominion) to receive, possess, transfer, and store spent fuel from North Anna Power Station (NAPS), Units 1 and 2, in the NAPS Independent Spent Fuel Storage Installation (ISFSI). The renewed license would authorize Dominion to continue to store spent fuel in the NAPS ISFSI for an additional 40 years from June 30, 2018, the expiration date of the original license.

DATES: A request for a hearing or petition for leave to intervene must be filed by October 24, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0177 when contacting the NRC about the availability of information regarding this document.

You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0177. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Kristina Banovac, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7116; email: *Kristina.Banovac@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated May 25, 2016, an application from Dominion for renewal of SNM License No. SNM–2507 for the NAPS ISFSI for an additional 40 years (ADAMS Accession No. ML16153A140). The license authorizes Dominion to receive, possess, transfer, and store spent fuel from NAPS, Units 1 and 2, in the NAPS ISFSI, located in Louisa County, Virginia. This license renewal, if approved, would authorize Dominion to continue to store spent fuel at the NAPS ISFSI, under the provisions of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste."

Following an NRC administrative completeness review, documented in a letter to Dominion dated July 21, 2016 (ADAMS Accession No. ML16207A104), the NRC staff has determined that the renewal application contains sufficient information for the NRC staff to begin its technical review and is acceptable for docketing. The application has been docketed in Docket No. 72–16, the existing docket for SNM License No. SNM–2507. If the NRC approves the renewal application, the approval will be documented in the renewal of SNM License No. SNM–2507. The NRC will approve the license renewal application if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a safety evaluation report. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

The NRC staff is also reviewing a license amendment request from Dominion for authorization to store high-burnup fuel (HBF) in a modified TN–32B cask under SNM License No. SNM–2507, which was noticed in the **Federal Register** on October 13, 2015 (80 FR 61500). The license renewal application reflects the current licensing bases of the NAPS ISFSI and does not address the aspects of the HBF license amendment request, as the request is still under review and is not currently a part of the ISFSI licensing bases. However, if the NRC approves the HBF amendment request, the HBF cask would then be a part of the licensing bases for the ISFSI, and the NRC would ask Dominion to address the HBF cask in the license renewal application.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC's Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 24, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission to the NRC," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a hearing request and petition to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 15th day of August 2016.

For the Nuclear Regulatory Commission.

Kristina L. Banovac,

Project Manager, Renewals and Materials Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–20092 Filed 8–22–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 23, 2016

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 31 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–182, CP2016–262.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–20044 Filed 8–22–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 28 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–184, CP2016–264.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–20045 Filed 8–22–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 27 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–183, CP2016–263.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–20043 Filed 8–22–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78601; File No. SR–NYSEArca–2016–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program

August 17, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 8, 2016, NYSE Arca, Inc. (the

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

"Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on August 31, 2016, until December 31, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on August 31, 2016, until December 31, 2016.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Equities Rule 7.44(m), the pilot period for the Program was originally scheduled to end twelve months after the date of implementation. Because the Program was implemented on April 14, 2014, the first pilot period for the Program ended on April 14, 2015 and the Exchange extended the pilot period to August 31, 2016.[5] In 2015, the Exchange adopted NYSE Arca Equities Rule 7.44P, which will govern the Retail Liquidity Program when the Exchange implements its Pillar trading platform.[6]

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[7] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[8] Through this filing, the Exchange seeks to amend NYSE Arca Equities Rule 7.44(m) and Rule 7.44P(m) and extend the current pilot period of the Program until December 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

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[4] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) ("RLP Approval Order").

[5] The Exchange announced the implementation date by Trader Update, which is available here: *https://www.nyse.com/publicdocs/nyse/notifications/trader-update/2014_04_07_Arca_RLP%20GO%20LIVE.pdf. See* Securities Exchange Act Release No. 77425 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR–NYSEArca–2016–47).

[6] *See* Securities Exchange Act Release No. 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR–NYSEArca–2015–56) ("Pillar Approval Order").

[7] *See* RLP Approval Order, *supra* n. 4, 78 FR at 79529.

[8] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 8, 2016.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the expiration of the current pilot period. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of August 31, 2016, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–113 and should be submitted on or before September 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20062 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, August 25, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 18, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–20214 Filed 8–19–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78604; File No. SR–ICEEU–2016–009]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Settlement of UK Spot Natural Gas Contracts and European Emissions Contracts

August 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2016, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the changes is to amend certain provisions of the ICE Clear Europe Delivery Procedures relating to the settlement of UK spot natural gas contracts and European emissions contracts that are cleared by ICE Clear Europe.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule changes is to modify the ICE Clear Europe Delivery Procedures relating to the settlement of UK natural gas spot contracts and European emissions contracts. The natural gas spot contracts, specifically the ICE Endex UK OCM Natural Gas Spot Contracts (''UK OCM Natural Gas Spot Contracts''), are traded on the ICE Endex market and cleared by ICE Clear Europe. The European emissions futures contracts (''European Emissions Contracts'') are traded on the ICE Futures Europe market and cleared by ICE Clear Europe. ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures in connection with these changes.

ICE Clear Europe submits revisions to Parts A and E of the Delivery Procedures. The text of the proposed Delivery Procedure amendments is attached in Exhibit 5, with additions underlined and deletions in strikethrough text.

In Part A of the Delivery Procedures, which applies to the European Emissions Contracts, a new paragraph 4 has been added to specify the requirements on buyers and sellers under the relevant contracts to provide delivery margin (and subsequent paragraphs have been renumbered). The delivery timetable in paragraph 5 and documentation requirements in paragraph 9 have been amended to remove references to the ICE Registry Account Notification Form, which is no longer required. The amendments to the delivery timetable in paragraph 5 also clarify the timing of requirements to provide delivery margin and the timing for the buyer to pay the full contract value to the Clearing House and for the Clearing House to remit the full contract value to the applicable seller. The delivery timetable has been further revised to change the deadlines for submission of certain delivery-related forms to the Clearing House.

In Part E of the Delivery Procedures, which applies to the UK OCM Natural Gas Spot Contracts, in paragraph 1 the definition of Delivery Month has been further clarified and a new definition of Invoice Period has been added, which is used to determine the revised timing of various settlement requirements. These changes are consistent with the approach used for other natural gas contracts cleared by ICE Clear Europe. In paragraph 6, several amendments have been made to settlement timetables, including to shorten certain periods for payment and release of relevant security or delivery margin. Under the revised Delivery Procedures, payment for completed deliveries will be made on the second clearing day following the relevant delivery day, and buyer's margin will also be released on such day. Timing for delivery of relevant invoice details has been tied to the new Invoice Period definition. In connection with the revised (and shorter) settlement cycle, the amendments also eliminate the concept of contingent credits made for prior deliveries. Revised paragraph 7 clarifies the treatment of failed deliveries, including the ability of the Clearing House to require additional delivery margin from the buyer and seller, and the timing of ultimate payment in respect of a prior month's failed deliveries. Certain reporting responsibilities and deadlines in paragraph 8 are also clarified in light of the adoption of the Invoice Period concept.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[6] and in particular are consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7] Specifically, the amendments are designed to enhance the procedures for settlement of the UK OCM Natural Gas Spot Contracts and European Emissions Contracts. Among other changes, with respect to the UK OCM Natural Gas Contracts, the amendments will shorten the settlement cycle and facilitate prompt payment for completed deliveries. This will, in turn, reduce settlement risk. The amendments will make other clarifications to the timing of settlement and provision of related delivery margin, as well as update related documentation requirements. ICE Clear Europe is not otherwise changing its financial resources, risk management, systems and operational arrangements that support clearing of these contracts (and address physical delivery under these contracts). In ICE Clear Europe's view, these changes will enhance its settlement procedures generally, and thus promote the prompt and accurate settlement of UK OCM Natural Gas Spot Contracts and European Emissions Contracts, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed procedure changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed herein, the amendments would make certain clarifications and enhancements to the settlement procedures for the UK OCM Natural Gas Spot Contracts and European Emissions Contracts. These changes will apply equally to all clearing members (and other market participants) trading or clearing these products. ICE Clear Europe does not believe that these changes would adversely affect access to clearing for clearing members or their customers or other market participants, or materially and adversely affect the cost of clearing for market participants. Similarly, ICE Clear Europe does not believe the proposed change would otherwise adversely affect competition among clearing members or for clearing services generally. To the extent that the changes in the settlement cycle may impose certain additional costs on market participants, ICE Clear Europe believes that such costs are warranted in light of the benefits to market participants, and the overall clearing framework, of a shorter settlement cycle. Accordingly, ICE Clear Europe is of the view that any impact on competition is appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(4)(ii)[10] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2016–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2016–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2016–009 and should be submitted on or before September 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20064 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32221; 812–14567]

FS Global Credit Opportunities Fund, et al.; Notice of Application

August 17, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares ("Shares") with sales loads and/or asset-based distribution and/or service fees and contingent deferred sales loads ("CDSCs").

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[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4)(ii).

[11] 17 CFR 200.30–3(a)(12).

APPLICANTS: FS Global Credit Opportunities Fund (the "Master Fund"), FS Global Credit Opportunities Fund–ADV ("FSGCO–ADV") and FS Global Advisor, LLC (the "Adviser").

FILING DATES: The application was filed on October 16, 2015, and amended on February 18, 2016, June 3, 2016 and August 4, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 9, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 201 Rouse Boulevard, Philadelphia, PA 19112.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. FSGCO–ADV and the Master Fund are non-diversified closed-end management investment companies registered under the Act and organized as Delaware statutory trusts.[1] FSGCO–ADV invests substantially all of its assets in shares of the Master Fund. The Master Fund's primary investment objective is to generate an attractive total return consisting of a high level of current income and capital appreciation, with a secondary objective of capital preservation. The Master Fund primarily invests in a portfolio of secured and unsecured floating and fixed rate loans, bonds and other types of credit instruments.

2. The Adviser, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Master Fund.

3. FSGCO–ADV's Shares[2] are currently offered in a continuous public offering pursuant to a registration statement under the Securities Act of 1933 and the Act. FSGCO–ADV's Shares are not offered or traded in a secondary market and are not listed on any securities exchange or quoted on any quotation medium. Applicants do not expect that a secondary market will develop for the Shares.

4. FSGCO–ADV currently has outstanding a single class of Shares. FSGCO–ADV accepts subscriptions for Shares on a continuous basis and issues Shares at weekly closings at its then-current net asset value per Share without a sales load, but Shares are subject to an annual distribution fee of 0.67% of net asset value and a CDSC of up to 2.0% of the aggregate net asset value of a Shareholder's Shares repurchased by the Fund if Shares are tendered for repurchase within three years. The Fund proposes to offer multiple classes of Shares that would be offered at net asset value and may also charge front-end sales loads, CDSCs, and/or annual asset-based service and/or distribution fees. Each class of Shares of any Fund would comply with the provisions of rule 12b-1 under the Act or any successor thereto or replacement rule, as if that rule applied to closed-end management investment companies, and with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers Inc., or any successor thereto or replacement rule ("NASD Conduct Rule 2830"),[3] as if that rule applied to the Funds.

5. Applicants request that the order also apply to any other continuously offered registered closed-end management investment company, existing now or in the future, for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser acts as investment adviser, and which either (a) provides periodic liquidity with respect to its Shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 ("1934 Act") or (b) operates as an "interval fund" pursuant to rule 23c–3 under the Act (each, a "Future Fund" and, together with FSGCO–ADV, the "Funds").[4]

6. In order to provide Shareholders with a limited degree of liquidity, FSGCO–ADV may from time to time offer to repurchase Shares at their then current net asset value in accordance with the requirements of rule 13e–4 under the 1934 Act and section 23(c)(2) of the Act.[5] FSGCO–ADV may repurchase Shares on such terms as may be determined by its Board[6] in its complete and absolute discretion unless, in the judgment of the majority of the directors or trustees who are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act, such repurchases would not be in the best interests of its Shareholders or would violate applicable law.[7] FSGCO–ADV will offer to repurchase Shares at a price equal to the net asset

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[1] The Master Fund currently serves as the master fund in a master-feeder structure operating in accordance with section 12(d)(1)(E) of the Act. The Master Fund will not issue multiple classes of its shares and is an applicant because of the master-feeder structure.

[2] The term "Shares" includes any other equivalent designation of a proportionate ownership interest (such as interests or units) in the Funds (as defined below). The holders of Shares are referred to as "Shareholders".

[3] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority ("FINRA").

[4] Any Fund relying on this relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the order requested in the application is listed as an applicant.

[5] To date, the Master Fund has not conducted repurchase offers for its shares. To the extent the Master Fund is required in the future to conduct repurchase offers for its shares in order to allow FSGCO–ADV to satisfy repurchase requests under its Share repurchase program, it will do so in accordance with the requirements of rule 13e–4 under the 1934 Act and section 23(c)(2) of the Act.

[6] The boards of trustees or similar governing body of each Fund is referred to herein as a "Board".

[7] The Funds may subject Shares to an "early withdrawal charge" (a "Repurchase Fee") at a rate of up to 2.00% of the aggregate net asset value of a Shareholder's Shares repurchased by the Fund if the interval between the date of the Shareholder's purchase of Shares and the date on which the applicable Fund repurchases such Shares is less than one year. Any Repurchase Fee will apply equally to all Shareholders of the applicable Fund, regardless of the class of Shares held by such Shareholders, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of or eliminate the Repurchase Fee, the Fund will comply with the requirements of rule 22d–1 under the Act as if the Repurchase Fee were a CDSC and as if the Fund were an open-end investment company. The Fund's waiver, scheduled variation or elimination of the Repurchase Fee will apply uniformly to all Shareholders of the Fund, regardless of the class of Shares held by such Shareholders.

value per Share in effect on each date of repurchase. The applicants anticipate that any Future Funds will offer to repurchase Shares on a quarterly basis.

7. Applicants represent that any asset-based service and/or distribution fees will comply with the provisions of NASD Conduct Rule 2830. Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As if they were open-end investment companies, the Funds will disclose fund expenses borne by holders of each class of Shares during the reporting period in Shareholder reports and describe in their prospectuses any arrangements that result in breakpoints in, or elimination of, sales loads.[8] Each Fund will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Funds.[9]

8. All expenses incurred by a Fund will be allocated among its various classes of Shares based on the respective net assets of such Fund attributable to each class of Shares, except that the net asset value and expenses of each class of Shares will reflect the expenses associated asset-based service and/or distribution fees, Shareholder service fees, and any other incremental expenses of that class of Shares. Expenses of a Fund allocated to a particular class of Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

9. If the Funds offer an exchange privilege or conversion feature on certain future classes of Shares, any such privilege or feature introduced in the future will comply with rule 11a–1, rule 11a–3 and rule 18f–3 under the Act as if the Fund were an open-end investment company.

10. If the requested relief is granted, FSGCO–ADV, and any other Fund that imposes a CDSC, will comply with rule 6c–10 as if that rule applied to closed-end management investment companies. Applicants further state that any Fund that imposes a CDSC will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all Shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of a Fund may be prohibited by section 18(c) of the Act.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of a Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class of Shares.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of Shares.

4. Applicants believe that the proposed allocation of expenses relating to distribution and voting rights is equitable and will not discriminate against any group or class of Shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of Shares through diverse distribution channels and provide investors with a broader choice of fee options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

CDSCs

5. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. FSGCO–ADV currently imposes a CDSC. If the requested relief is granted, FSGCO–ADV, and any other Fund that imposes a CDSC, will comply with rule 6c–10 as if that rule applied to closed-end management investment companies and will make all required disclosures in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that any Fund that imposes a CDSC will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all Shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Service and/or Distribution Fees

6. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

7. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into

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[8] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[9] *See* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

8. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants also believe that the requested relief meets the standards for relief in section 17(d) of the Act and rule 17d–1 thereunder.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each applicant will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1 and, where applicable, 11a–3 under the Act, as amended from time to time, or any successor rules thereto, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–20059 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78602; File No. SR–NYSEMKT–2016–76]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program

August 17, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 8, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on August 31, 2016, until December 31, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on August 31, 2016,[4] until December 31, 2016.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[5] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE MKT Rule 107C(m)—Equities, the pilot period for the Program is scheduled to end on August 31, 2016.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[6] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[7] Through this filing, the Exchange seeks to amend NYSE MKT Rule 107C(m)—Equities and extend the current pilot period of the Program until December 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 77424 (March 23, 2016), 81 FR 17522 (March 29, 2016) (SR–NYSEMKT–2016–39).

[5] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR–NYSEAmex–2011–84).

[6] *See id.* at 40681.

[7] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 8, 2016.

[8] 15 U.S.C. 78f(b).

Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the expiration of the current pilot period. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of August 31, 2016, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–76 and should be submitted on or before September 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20063 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78605; File No. SR–NASDAQ–2016–118]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct a Typographical Error in Rules IM–5910–1 and IM–5920–1

August 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rules IM–5910–1 and IM–5920–1 to correct a typographical error.

The text of the proposed rule change is available on the Exchange’s Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 2015, Nasdaq adopted an all-inclusive annual listing fee, which simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.[3] This new fee structure was designed, primarily, to address customer complaints about the number and, in some cases, the variable nature of certain of Nasdaq’s listing fees. In SR–NASDAQ–2016–085,[4] Nasdaq made changes to the rules governing the all-inclusive annual listing fee to allow currently listed companies that did not previously opt in to the all-inclusive annual fee program to do so effective January 1, 2017. This rule change, however, contained a typographical error, which appears in two rules, that Nasdaq is now proposing to correct.

Specifically, Exchange Rules IM–5910–1(b)(3)(B) and IM–5920–1(b)(3)(B), now contain the extra word “be” in their description of the benefits for the listing of additional shares, which should have been deleted. Nasdaq proposes to correct this error and remove the word from both rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq asserts that the proposed correction to Rules IM–5910–1(b)(3)(B) and IM–5920–1(b)(3)(B) will serve the Act’s goals by ensuring that the Exchange’s rules use accurate terminology.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Moreover, the Exchange believes that the proposed correction does not impact competition in any respect, since it is designed to correct a typographical error.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR–NASDAQ–2014–087).

[4] Securities and Exchange Act Release No. 78149 (June 24, 2016), 81 FR 42388 (June 29, 2016) (SR–NASDAQ–2016–085).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78s(b)(3)(a)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–118 and should be submitted on or before September 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20065 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78598; File No. SR–NYSEMKT–2016–52]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Rules 340, 341, and 359 To Extend the Time Within Which a Member, Member Organization, or an ATP Holder Must File a Uniform Termination Notice for Securities Industry Registration ("U5")

August 17, 2016.

On June 16, 2016, NYSE MKT LLC filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 340, 341, and 359 to extend the time within which a member, member organization, or an ATP Holder must file a U5. The proposed rule change was published for comment in the **Federal Register** on July 7, 2016.[3] The Commission received one comment letter on the proposal and a response to the comments from NYSE MKT LLC.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 21, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the comment received and the response to the comment regarding the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates October 5, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2016–52).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20060 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78198 (June 30, 2016), 81 FR 44363.

[4] *See* letter from Judith Shaw, President, North American Securities Administrators Association, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 3, 2016 and letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange to Brent J. Fields, Secretary, SEC, dated August 12, 2016.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78600; File No. SR–NYSE–2016–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program

August 17, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 8, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on August 31, 2016, until December 31, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on August 31, 2016,[4] until December 31, 2016.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[5] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on August 31, 2016.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[6] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[7] Through this filing, the Exchange seeks to amend NYSE Rule 107C(m) and extend the current pilot period of the Program until December 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the expiration of the current pilot period. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of August 31, 2016, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

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[4] *See* Securities Exchange Act Release Nos. 77426 (March 23, 2016), 81 FR 17533 (March 29, 2016) (SR–NYSE–2016–25).

[5] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR–NYSE–2011–55).

[6] *See id.* at 40681.

[7] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 8, 2016.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–54 and should be submitted on or before September 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2016–20061 Filed 8–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration ("SBA") under Section 309 of the Small Business Investment Act of 1958, as amended, and Section 107.1900 of the Small Business Administration Rules and Regulations, SBA by this notice declares null and void the license to function as a small business investment company under the Small Business Investment Company License No. 08/78–0166 issued to Vista Ventures Advantage, LP

United States Small Business Administration.

Dated: August 16, 2016.

Mark Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016–20032 Filed 8–22–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9670]

Notice of Receipt of Application for a Presidential Permit To Operate and Maintain the Brownsville West Rail Bypass International Bridge on the U.S.-Mexico Border West of Brownsville, Texas

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that, on July 22, 2016, it received an application from the Union Pacific Railroad Company (UPRR) for a Presidential Permit to operate and maintain the Brownsville West Rail Bypass International Bridge. The current Presidential Permit for the Brownsville West Rail Bypass International Bridge is held by Cameron County, Texas. The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant federal agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether transferring the Presidential Permit from Cameron County to UPRR would serve the national interest.

Interested members of the public are invited to submit written comments regarding this application on or before September 22, 2016 to the U.S.-Mexico Border Affairs Office, via email at *WHA-BorderAffairs@state.gov* or by mail at WHA/MEX—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: U.S.-Mexico Border Affairs Office, via email at *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at WHA/MEX—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: The application and supporting documents are available online at *http://www.state.gov/p/wha/rt/permit/app/upp/index.htm.*

Dated: August 8, 2016.

Brian Harris,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2016–20111 Filed 8–22–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9679]

Shipping Coordinating Committee, Notice of Public Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:00 a.m. on Thursday, October 13, 2016, in Room 7K15–01 of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King, Jr., Avenue SE., Washington, DC 20593. The primary purpose of the meeting is to prepare for the Seventieth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee to be held at the IMO Headquarters, United Kingdom, October 24–28, 2016.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other bodies
—Consideration and adoption of amendments to mandatory instruments
—Harmful aquatic organisms in ballast water
—Air pollution and energy efficiency
—Further technical and operational measures for enhancing the energy efficiency of international shipping
—Reduction of GHG emissions from ships
—Identification and protection of Special Areas and PSSAs
—Pollution prevention and response (report of the third session of the Sub-Committee)
—Reports of other sub-committees
—Technical cooperation activities for the protection of the marine environment
—Capacity building for the implementation of new measures
—Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG–RAR
—Application of the Committees' Guidelines
—Work programme of the Committee and subsidiary bodies
—Any other business
—Consideration of the report of the Committee

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Tiffany Duffy, by email at *tiffany.a.duffy@uscg.mil*, by phone at (202) 372–1376, or in writing at 2703 Martin Luther King, Jr., Avenue SE., Stop 7509, Washington, DC 20593–7509 not later than October 6, 2016. Requests made after October 6, 2016 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. It is recommended that attendees arrive to the Headquarters building no later than 30 minutes ahead of the scheduled meeting for the security screening process. The building is accessible by taxi, public transportation, and privately owned conveyance (upon request). Additional information regarding this and other SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: August 12, 2016.

Jonathan W. Burby,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2016–20113 Filed 8–22–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9681]

Culturally Significant Object Imported for Exhibition Determinations: "In the Tower: Barbara Kruger" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "In the Tower: Barbara Kruger," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, District of Columbia, from on or about September 30, 2016, until on or about January 22, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 17, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–20298 Filed 8–22–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: State Route (S.R.) 30, Cache County, Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed transportation improvements in Cache County, Utah.

FOR FURTHER INFORMATION CONTACT: Paul Ziman, Area Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, telephone (801) 955–3525, *Paul.Ziman@dot.gov,* The Utah Department of Transportation (UDOT) contact is Rod Terry, Project Manager, Utah Department of Transportation, Region One Office, 166 West Southwell Street, Ogden, UT 84404–4194, telephone (801) 620–1686, email *rodterry@utah.gov.*

SUPPLEMENTARY INFORMATION: FHWA, in cooperation with UDOT, will prepare an EIS for a proposal to address safety and current and projected traffic demand on S.R. 30 in the city of Logan and in Cache County, Utah. The proposed project area extends from S.R. 23 to S.R. 252 (1000 West in Logan), a distance of about 6.4 miles. Safety and transportation improvements are needed to address current identified design deficiencies and current and projected 2040 travel demand along the existing two-lane S.R. 30 highway.

Prior to this Notice of Intent, UDOT prepared the State Route 30 Corridor Study, I–15 to 1000 West (June 2016). The corridor study identified current and future safety and capacity needs that will be incorporated into the EIS process. Throughout the corridor study process, UDOT relayed to stakeholders that identified needs might require further analysis in a National Environmental Policy Act (NEPA) document and that the S.R. 30 Corridor Study Planning Report will be adopted in such NEPA documents. The corridor study also helped UDOT identify the logical termini for highway improvements evaluated in the EIS. The corridor study can be reviewed at *udot.utah.gov/SR30study.*

FHWA will consider a reasonable range of alternatives that meet the purpose of and need for the project and are based on agency and public input. These alternatives include: (1) Taking no action (no-build); (2) using alternate travel modes; (3) using access control and transportation demand management to improve the efficiency of the existing road network; (4) upgrading and adding lanes to the existing road network, including S.R. 30; (5) combinations of any of the above; and (6) other feasible alternatives identified during the scoping process.

A Coordination Plan is being prepared to define the agency and public participation procedure for the environmental review process. The plan will outline (1) how agencies and the public will provide input during the scoping process; (2) the development of the purpose and need; and (3) alternatives development.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies as well as to Native American tribes and to private organizations and citizens who have previously expressed, or who are known to have, an interest in this proposal. These letters will invite agencies, tribes, and the public to participate in scoping meetings at locations and dates to be determined.

Public meetings will be held to allow the public, as well as Federal, state, and local agencies, and tribes, to provide comments on the purpose of and need for the project, potential alternatives, and social, economic, and environmental issues of concern.

In addition, a public hearing will be held following the release of the draft EIS. Public notice advertisements and direct mailings will notify interested parties of the time and place of the public meetings and the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or UDOT at the addresses provided above by October 21, 2016.

UDOT is currently seeking NEPA Assignment from FHWA and expects the process to be finalized before the end of 2016. NEPA Assignment allows UDOT to assume FHWA's responsibilities under NEPA. This also applies to all or part of FHWA's responsibilities for environmental reviews, consultation, and other actions required under other Federal environmental laws such as the Endangered Species Act and the Clean Water Act. Once FHWA approves UDOT's NEPA Assignment application, UDOT will take the lead in completing the S.R. 30 EIS.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: August 15, 2016.

Ivan Marrero,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 2016–19827 Filed 8–22–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0084]

Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments, highway safety program guidelines.

SUMMARY: Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. The National Highway Traffic Safety Administration (NHTSA) is seeking comments on one (1) new guideline that reflects program methodologies and approaches that have proven to be successful and are based on sound science and program administration. The new guideline is No. 9 Distracted and Drowsy Driving. NHTSA believes the new guideline will provide more accurate, current and effective guidance to the States regarding distracted and drowsy driving. The guideline will be made publicly available on the NHTSA Web site.

DATES: Comments must be received on or before September 22, 2016.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477 FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Guzzetta (202) 366–3665, Office of Impaired Driving and Occupant Protection, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Email: *carole.guzzetta@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 402 of title 23 of the United States Code requires the Secretary of

Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. These guidelines reflect the best available science and the real-world experience of NHTSA and the States in developing and managing traffic safety program content. NHTSA will update the guidelines periodically to address new issues and to emphasize program methodologies and approaches that have proven to be effective in these program areas.

The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts that are supported with section 402 grant funds, as well as safety activities funded from other sources. The guidelines provide a framework for developing a balanced highway safety program and serve as benchmarks by which States can assess the effectiveness of their own programs. NHTSA encourages States to use these guidelines and build upon them to optimize the effectiveness of highway safety programs conducted at the State and local levels.

The guidelines emphasize areas of nationwide concern and highlight effective countermeasures. As each guideline is updated or created, it will include the date of its revision or development.

NHTSA has developed a new guideline on distracted and drowsy driving, No. 9, to address these growing problems. This new guideline will help States develop plans to address distracted and drowsy driving. In 2014, ten percent of fatal crashes, 18 percent of injury crashes, and 16 percent of all police-reported motor vehicle traffic crashes were reported as distraction-affected crashes. These proportions have remained stable over the past five years of reported data. In 2014, there were 3,179 people killed and an estimated additional 431,000 injured in motor vehicle crashes involving distraction-affected drivers. Ten percent of all drivers 15 to 19 years old involved in fatal crashes were reported as distracted at the time of the crashes. This age group has the largest proportion of drivers killed in the age range who were distracted at the time of the crashes. Lastly, in 2014, there were 520 non-occupants, such as pedestrians and bicyclists, killed in distraction-affected crashes.[1] The limitations of these data are described in an April 2016 Traffic Safety Facts Research Note (DOT HS 812 260).[2]

Current estimates range from 2 percent to 20 percent of annual traffic deaths attributable to driver drowsiness. According to NHTSA, annually on average from 2009 to 2013, there were over 72,000 police-reported crashes involving drowsy drivers, injuring more than an estimated 41,000 people, and killing more than 800.[3] By using a multiple imputation methodology, the AAA Foundation for Traffic Safety estimated that 7 percent of all crashes and 16.5 percent of fatal crashes involved a drowsy driver.[4] This estimate suggests that more than 5,000 people died in drowsy-driving-related motor vehicle crashes across the United States last year. Research conducted in 2012 by the AAA Foundation for Traffic Safety showed drivers ages 16–24 were the most likely to report having fallen asleep while driving within the past year.[5] Finally, the AAA Foundation's 2015 Traffic Safety Index reported that nearly all drivers (97.0%) view drowsy driving as a serious threat to their safety and a completely unacceptable behavior; however, nearly 1 in 3 (31.5%) admitted to driving when they were so tired that they had a hard time keeping their eyes open at some point in the past month.[6]

It is important that States begin to address the problems of distracted and drowsy driving. This guideline is designed to help policymakers with decisions about how best to address these growing issues.

All the highway safety guidelines are on the NHTSA Web site, in the Highway Safety Grant Management Manual, and on the Traffic Safety page at *http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/*.

II. Public Participation

How do I prepare and submit written comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments cannot exceed 15 pages (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your primary comments. There is no limit on the length of the attachments. Please submit your comments to the Docket by any of the methods outlined under **ADDRESSES**.

How can I be sure that my comments were received?

If you submit your comments by mail and wish the Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final guideline (assuming that one is issued), we will consider that comment as an informal suggestion for future guideline action.

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[1] National Center for Statistics and Analysis. (2016, April). *Distracted Driving 2014*. (Traffic Safety Facts Research Note, DOT HS 812 260). Washington, DC: National Highway Traffic Safety Administration. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/812260.pdf*.

[2] National Center for Statistics and Analysis. (2016, April). *Distracted Driving 2014*. (Traffic Safety Facts Research Note, DOT HS 812 260). Washington, DC: National Highway Traffic Safety Administration. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/812260.pdf*.

[3] National Center for Statistics and Analysis. National Highway Traffic Safety Administration Fatality Analysis Reporting System (FARS) and National Automotive Sampling System (NASS) General Estimates System (GES).

[4] Tefft, B.C. (2012). Prevalence of motor vehicle crashes involving drowsy drivers, United States, 1999–2008. *Accident Analysis & Prevention, 45*(1): 180–186.

[5] 2012 Traffic Safety Culture Index (2013, January). Washington, DC: AAA Foundation for Traffic Safety. Available at *www.aaafoundation.org/sites/default/files/2012TrafficSafetyCultureIndex.pdf*.

[6] 2015 Traffic Safety Culture Index (2016, February). Washington, DC: AAA Foundation for Traffic Safety. Available at *www.aaafoundation.org/sites/default/files/2015_TSCI.pdf*.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. You may also read the materials placed in the docket for this document (*e.g.*, the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

In consideration of the foregoing, NHTSA proposes new Guideline 9, to read as follows.

Highway Safety Program Guideline No. 9

Distracted and Drowsy Driving

Each State, in cooperation with its political subdivisions and tribal governments, and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. This highway safety program should include a distracted and drowsy driving component that promotes safe driving practices and educates drivers as to the serious consequences of driving distracted or drowsy. This guideline describes the components that a State program should include and the criteria that the program components should meet. Given the multidisciplinary nature of the highway safety problem, implementation of a comprehensive distracted and drowsy driving program requires coordination among several agencies and organizations.

Distracted and drowsy driving have many issues in common: Both are difficult to measure and observe; it is challenging to establish data collection to provide actual numbers of fatalities and injuries. Moreover, enforcement of these unsafe driving behaviors is challenging for law enforcement, further contributing to the difficulty in assessing the magnitude of the problem. Additionally, both behaviors result from lifestyle choices, which take them beyond driving and transportation issues.

I. Program Management

Each State should conduct data analysis to identify the nature and extent of its distracted and drowsy driving problems. Each State should have centralized program planning, implementation and coordination to establish realistic goals and objectives for the State's program, and to implement projects to reach these goals. A State distracted and drowsy driving program should:

- Conduct regular problem identification and evaluation activities to determine the scope of the distracted and drowsy driving problems in the State and guide the development of countermeasures;
- Establish performance targets to guide progress in reducing distracted and drowsy driving problems;
- Prioritize key populations for educational efforts to prevent the causes of distracted and drowsy driving crashes;
- Identify key messages that need to be conveyed to various populations to prevent distracted and drowsy driving;
- Provide leadership, training and technical assistance to other agencies and local programs and projects addressing these issues;
- Identify stakeholders/partners to help the program reach established goals and objectives; and
- Encourage participation in designated distracted and drowsy driving prevention campaigns, such as the annual Distracted Driving month activities.

II. Multidisciplinary Involvement

Distracted and drowsy driving cut across many disciplines. For example, being fatigued affects health, overall performance and mood. It can be the result of lifestyle choices, a physical condition or medication. Distraction goes beyond driving, as many individuals are engaging in distracted walking and biking as well. Therefore, program efforts should align as both a public health and a transportation issue. Following are recommended groups that should be involved in efforts to reduce distracted and drowsy driving:

- Public Health and medical professionals;
- Driver education and licensing;
- Non-profit organizations;
- Community safety organizations;
- Businesses and fleet employers;
- Law enforcement and public safety (including EMS and Firefighters);
- State agencies, as appropriate;
- Media and communications (including social media) outlets;
- Academic/research organizations; and
- Engineering and technology partners.

III. Legislation, Regulation and Policy

Each State should enforce all traffic laws and regulations, including any with a focus on distracted and drowsy driving. States should work with other State agencies and private sector partners to establish policies directed at

- Prohibiting the use of wireless/electronic communication devices while driving on work-related business, whether in company or personal vehicles; and
- preventing drowsy driving while on work-related business, whether in company or personal vehicles. States should work with relevant employers to provide strategies to assist with scheduling shift changes that provide for improved sleep.

With respect to distracted driving, each State should enact and enforce laws prohibiting the use of wireless/electronic communications devices while driving. At a minimum, the law should:

- Prohibit a driver from using (*e.g.*, talking, dialing, browsing, texting[7]) a wireless/electronic communications device while driving;
- Make the violation a primary offense;
- Establish a minimum fine for a violation of the law; and
- Prohibit a driver from texting through a wireless/electronic communications device while stopped in an active traffic lane.

With respect to drowsy driving, in the absence of specific legislation, States may be able to use existing statutes addressing violations such as reckless driving, lane changes, and weaving to identify drowsy drivers and cite, as appropriate. States should enact and enforce laws prohibiting drowsy driving.

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[7] "Texting" is defined as reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, emailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication. (**Federal Register**/Vol. 81, No. 99/Monday, May 23, 2016/Rules and Regulations, p. 32590)

IV. Law Enforcement

Each State should ensure that State and community distracted and drowsy driving programs include a law enforcement component. States should provide guidance and support to:

- Develop protocols and training for law enforcement to identify the signs associated with distracted and drowsy driving and how the established laws in the State can and should be enforced;
- Develop protocols and training for law enforcement in recognizing the involvement of distraction and drowsiness in motor vehicle crashes;
- Ensure that police crash reports include designations for driver distractions and driver drowsiness/fatigue as contributory factors to crashes;
- Identify locations where drowsy driving crashes are most likely to occur and conduct enforcement efforts, as appropriate;
- Conduct regular enforcement, as well as high visibility enforcement, to address distracted driving and drowsy driving;
- Consider a special task force to deal exclusively with crash investigations thought to be the result of distracted and drowsy driving;
- Coordinate with educational and engineering activities;
- As needed, update the State's crash reporting form to be Model Minimum Uniform Crash Criteria (MMUCC) compliant with regard to distracted and drowsy driving codes; and
- Establish appropriate internal policies to limit distraction and institute fatigue management programs for law enforcement and other emergency personnel.

V. Highway and Traffic Engineering

Including a highway and traffic engineering component can be especially important in drowsy and distracted driving crashes. Each State should consider a network level crash analysis or review of policy and standards to ensure the benefits of shoulder and center rumble strips placed on appropriate roads and work with local/State policymakers to have them installed. States should also consider improvements to the safety and availability of safe roadway rest stops to allow for rest and/or time to make phone calls, etc. States should include improved lighting uniformity at rest stops; this provides an environment where drivers may feel it is safer to stop and rest.

VI. Communication Program

Each State should ensure that State and local programs contain a comprehensive communication component to support program and policy efforts, inclusive of social media and other relevant mediums that resonate with target audiences. The communication program should coordinate with law enforcement, businesses, health/medical, school- and college-based programs, and media outlets to share safety messages and campaign information. Communication programs and materials should be language and culturally relevant, and should address issues such as:

- Risks associated with distracted and drowsy driving;
- Signs and symptoms of distracted driving;
- Signs and symptoms of drowsy driving, including medicines and sleep disorders;
- Types of distractions beyond talking on a cell phone and texting, such as eating and drinking, using a GPS, grooming, etc.;
- Risks associated with distracted walking and bicycling;
- Countermeasures for dealing with distraction and drowsiness while driving;
- Laws and enforcement of laws, as appropriate; and
- Use of special events such as nationally recognized safety and injury prevention weeks to highlight the risks and dangers of distracted and drowsy driving.

VII. Driver Education and Licensing

Younger drivers are at risk for both distracted and drowsy driving. As such, each State should coordinate distracted and drowsy driving information and outreach plans using educational and other collateral materials, and include issues of distracted and drowsy driving in licensing programs (including Graduated Driver Licensing), both in classroom and behind the wheel. Each State should include information on distracted and drowsy driving in the driver licensing manual and driver licensing test questions.

VIII. Evaluation

Both problem identification and evaluation of distracted and drowsy driving crashes can be difficult. Often, a surviving driver may be reluctant to admit having been distracted or drowsy following a crash. However, each State can promote effective evaluation by:

- Supporting detailed analysis of police crash reports involving distracted and drowsy drivers;
- Evaluating the effectiveness of educational and communication programs by measuring behavior, knowledge, and attitude changes;
- Conducting and publicizing statewide surveys of public knowledge and attitude about distracted and drowsy driving;
- Conducting and publicizing observational surveys of driver distraction;
- Using available data to identify at-risk populations; and
- Ensuring that evaluation results are used to identify problems, plan new programs and improve existing programs and strategies.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–20165 Filed 8–22–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Management of Federal Agency Disbursements

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Management of Federal Agency Disbursements.

DATES: Written comments should be received on or before October 24, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Management of Federal Agency Disbursements.

OMB Number: 1530–0016.

Transfer of OMB Control Number: The Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by FMS and BPD will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: None.

Abstract: This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury-designated account to individuals at a financial institution that offers such accounts.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households, Business or other for-profit institutions, Not-for-profit Institutions.

Estimated Number of Respondents: 1,300.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–19976 Filed 8–22–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

MyVA Federal Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2., that the MyVA Advisory Committee (MVAC) will meet October 4 and 5, 2016, at the Department of Veterans Affairs, VA Pittsburgh Healthcare System—University Drive Campus, 4060 Allequippa Street, Pittsburgh, PA, 15261.

The purpose of the Committee is to advise the Secretary, through the Executive Director, MyVA Task Force Office, regarding the MyVA initiative and VA's ability to rebuild trust with Veterans and other stakeholders, improve service delivery with a focus on Veteran outcomes, and set the course for longer-term excellence and reform of VA.

On October 4 from 9:00 a.m. to 5:30 p.m., the Committee will convene an open session at the VA Pittsburgh Healthcare System—University Drive Campus, 4060 Allequippa Street, Pittsburgh, PA, 15261, to discuss the progress on and the integration of the work in the five key MyVA work streams—Veteran Experience (explaining the efforts conducted to improve the Veteran's experience), Employees Experience, Support Services Excellence (such as information technology, human resources, and finance), Performance Improvement (projects undertaken to date and those upcoming), and VA Strategic Partnerships.

On October 5, from 8:00 a.m. to 12:30 p.m., the Committee will meet at the VA Pittsburgh Healthcare System—University Drive Campus, 4060 Allequippa Street, Pittsburgh, PA, 15261, to discuss and recommend areas for improvement on VA's work to date, plans for the future, and integration of the MyVA efforts. This session is open to the public. No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Debra Walker, Designated Federal Officer, MyVA Program Management Office, Department of Veterans Affairs, 1800 G Street NW., Room 880–40, Washington, DC, 20420, or email at *Debra.Walker3@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Walker.

Because the meeting will be held in a Government building, anyone attending must be prepared to show a valid photo government issued ID. Please allow 15 minutes before the meeting begins for this process.

Dated: August 17, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–20033 Filed 8–22–16; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 101, 103, 104, et al.
Transportation Worker Identification Credential (TWIC)—Reader Requirements; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 103, 104, 105 and 106

[Docket No. USCG–2007–28915]

RIN 1625–AB21

Transportation Worker Identification Credential (TWIC)—Reader Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule to require owners and operators of certain vessels and facilities regulated by the Coast Guard to conduct electronic inspections of Transportation Worker Identification Credentials (TWICs) as an access control measure. This final rule also implements recordkeeping requirements and security plan amendments that would incorporate these TWIC requirements. The TWIC program, including the electronic inspection requirements in this final rule, is an important component of the Coast Guard's multi-layered system of access control requirements designed to enhance maritime security.

This rulemaking action builds upon existing regulations designed to ensure that only individuals who hold a valid TWIC are granted unescorted access to secure areas of Coast Guard-regulated vessels and facilities. The Coast Guard and the Transportation Security Administration have already promulgated regulations pursuant to the Maritime Transportation Security Act that require mariners and other individuals to hold a TWIC prior to gaining unescorted access to a secure area. By requiring certain high-risk vessels and facilities to perform electronic TWIC inspections, this rule enhances security at those locations. This rule also implements the Security and Accountability For Every Port Act of 2006 electronic reader requirements.

DATES: This final rule is effective August 23, 2018.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–28915 and are available using the Federal eRulemaking Portal. You can find this docket on the Internet by going to *http://www.regulations.gov,* entering "USCG–2007–28915" and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email LCDR Kevin McDonald, Coast Guard; telephone 202–372–1168, email *Kevin.J.Mcdonald2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations
II. Regulatory History and Information
III. Executive Summary
  A. Basis and Purpose
  B. Summary of Costs and Benefits
IV. Background
V. Discussion of Comments and Changes to the Final Rule
  A. General Matters Relating to TWIC
  1. Purpose and Efficacy of the TWIC Program
  2. Risk Analysis Methodology
  B. Electronic TWIC Inspection
  1. Electronic TWIC Inspection Does Not Necessarily Require a TWIC Reader
  2. Integrating Electronic TWIC Inspection Into a PACS
  a. List of Acceptable TWIC Readers
  b. PIN Pads and Biometric Input Methods
  3. Comments Related to Troubleshooting TWIC
  a. Lost, Stolen, or Damaged TWIC
  i. Vessels and Facilities Using a PACS
  ii. Vessels and Facilities Using TWIC Readers
  b. Transportation Worker Forgets to Bring TWIC to Work Site
  c. Inaccessible Biometrics
  d. Malfunctioning Access Control Systems
  e. Requirements for Varying MARSEC Levels
  4. Recordkeeping Requirements
  C. When to Conduct Electronic TWIC Inspection
  1. Secure, Restricted, Public Access, Passenger Access, and Employee Access Areas
  a. "Prior to Each Entry" for Risk Group A Facilities
  b. Recurring Unescorted Access
  2. Risk Group A Vessels
  3. Risk Groups B and C
  4. Miscellaneous Questions Regarding the Locations of Electronic TWIC Inspection
  D. Determination of Risk Groups
  1. Risk Group A Facilities
  a. Alternative Security Programs
  b. Determining Risk Group A Facilities
  2. The Crewmember Exemption Does Not Apply to Facilities
  3. The Low Number of Crewmembers Exemption
  4. Calculating the Total Number of TWIC-holding Crewmembers
  5. Threshold for the Crewmember Exemption of Vessels
  6. Outer Continental Shelf Facilities
  7. Vessels and Facilities Not in Risk Group A
  8. Barge Fleeting Facilities
  9. Switching Risk Groups
  E. Responses to Economic Comments
  1. Costs of TWIC Readers
  2. Number of TWIC Readers at Vessels and Facilities
  3. Transaction Times
  4. Security Personnel
  5. Other Cost Comments
  6. Costs Exceeding Benefits, Cost-effectiveness, and Risk Reduction
  7. Cumulative Costs of Security-related Rulemakings
  8. Small Business Impact
  F. Other Issues
  1. The GAO Report and the TWIC Pilot Program
  2. Additional Comments
  a. General Comments on the TWIC Program
  b. Clarification of Specific Items
  c. Comments Outside the Scope of this Rulemaking
VI. Regulatory Analyses
  A. Regulatory Planning and Review
  B. Small Entities
  C. Assistance for Small Entities
  D. Collection of Information
  E. Federalism
  F. Unfunded Mandates Reform Act
  G. Taking of Private Property
  H. Civil Justice Reform
  I. Protection of Children
  J. Indian Tribal Governments
  K. Energy Effects
  L. Technical Standards
  M. Environment

I. Abbreviations

AHP—Analytical Hierarchy Process
ANPRM—Advanced Notice of Proposed Rulemaking
ASP—Alternative Security Program
CCA—Certificate for Card Authentication
CCL—Canceled Card List
CCTV—Closed-Circuit Television
CDC—Certain Dangerous Cargoes
CFR—Code of Federal Regulations
CHUID—Card Holder Unique Identifier
COI—Certificate of Inspection
DHS—Department of Homeland Security
DRAA—Designated Recurring Access Area
E.O.—Executive Order
FASC—N Federal Agency Smart Credential—Number
FR—Federal Register
FSP—Facility Security Plan
ICE—Initial Capability Evaluation
MARSEC—Maritime Security
MISLE—Marine Information for Safety and Law Enforcement
MSRAM—Maritime Security Risk Analysis Model
MTSA—Maritime Transportation Security Act of 2002
NIST—National Institute of Standards and Technology
NPRM—Notice of Proposed Rulemaking
NTTAA—National Technology Transfer and Advancement Act
NVIC—Navigation and Vessel Inspection Circular
OCS—Outer Continental Shelf
OMB—Office of Management and Budget
PAC—Policy Advisory Council
PACS—Physical Access Control System
PVA—Passenger Vessel Association
PII—Personal Identifying Information
PIN—Personal Identification Number
Pub. L.—Public Law
QTL—Qualified Technology List
RA—Regulatory Analysis
RUA—Recurring Unescorted Access
SAFE—Port Act Security and Accountability For Every Port Act of 2006

SBA—Small Business Administration
SSI—Sensitive Security Information
TSA—Transportation Security Administration
TSAC—Towing Safety Advisory Committee
TSI—Transportation Security Incident
TWIC—Transportation Worker Identification Credential
U.S.C.—United States Code
VSP—Vessel Security Plan

II. Regulatory History and Information

On May 22, 2006, the Coast Guard and the Transportation Security Administration (TSA) jointly published a Notice of Proposed Rulemaking (NPRM) entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License." [1] On January 25, 2007, the Coast Guard and TSA published the final rule, also entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License." [2]

Although the May 22, 2006 NPRM proposed certain TWIC reader requirements, after reviewing the public comments, the Coast Guard decided to remove the proposed TWIC reader requirements from the January 25, 2007 final rule, address them in a separate rulemaking, and conducted a pilot program to address the feasibility of reader requirements before issuing a final rule.[3] For a detailed discussion of those public comments and Coast Guard responses, please refer to the January 25, 2007 final rule.[4]

On March 27, 2009, the Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) for this rulemaking.[5] On March 22, 2013, the Coast Guard published the NPRM for this rulemaking.[6] Additionally, we held four public meetings across the country in 2013.

III. Executive Summary

A. Basis and Purpose

In accordance with the Maritime Transportation Security Act of 2002 (MTSA) and the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), the Coast Guard is establishing rules requiring electronic readers for use at high-risk vessels and at facilities. These rules will ensure that prior to being granted unescorted access to a designated secure area, an individual will have his or her TWIC authenticated, the status of that credential validated against an up-to-date list maintained by the TSA, and the individual's identity confirmed by comparing his or her biometric (*i.e.* fingerprint) with a biometric template stored on the credential. By promulgating these rules, the Coast Guard is complying with the statutory requirement in the SAFE Port Act, improving security at the highest risk maritime transportation-related vessels and facilities, and making full use of the electronic and biometric security features integrated into the TWIC and mandated by Congress in MTSA.

The TWIC is currently being used as a visual identity badge on many vessels and facilities. Essentially, DHS requires that a security guard examines the security features (hologram and watermark) embedded on the surface of the credential, checks the expiration date listed on the card, and compares the photograph to the person presenting the credential. While this system of "visual TWIC inspection" provides some benefits, it does not address all security concerns, nor does it make full use of the security features contained in the TWIC. For example, if a TWIC is stolen or lost, an unauthorized individual could make use of the credential, and provided that individual resembles the picture on the TWIC, could gain access to a secure area. Additionally, if a TWIC is revoked because the individual has committed a disqualifying offense, such as the theft of explosives, there is no way for security officers on a vessel or at a facility to determine that fact from the face of the TWIC. Finally, a sophisticated adversary could forge a realistic replica of a credential. It is also worth noting that since a TWIC-holder is required to renew his or her credential every 5 years, the TWIC-holder's resemblance to the picture on the TWIC may decrease over time, rendering visual inspection a somewhat less accurate means to confirm identity. Through the process of "electronic TWIC inspection," by which TWICs are authenticated, validated, and the individual's identity confirmed biometrically, all of these scenarios would be thwarted or mitigated.

In this rulemaking process, the Coast Guard published an ANPRM, published an NPRM, hosted a series of public meetings around the country to solicit public input, and worked with the Transportation Security Administration to conduct a pilot program. As a result of this input, the Coast Guard made a number of changes and clarifications in this final rule that we believe provide a robust system that improves security, addresses industry, labor, and Congressional concerns, and clarifies numerous issues relating to the operational nature of the electronic TWIC inspection program. Primarily, this rule allows for an even more flexible implementation of the electronic TWIC inspection requirements than the proposed rule that will allow new systems to be integrated into existing security and access control systems. We believe that this flexibility will provide robust security without causing unnecessary costs or significantly disrupting business operations. A brief summary of the main changes from the proposed rule to the final rule follows.

- This final rule provides additional flexibility with regard to the purchase, installation, and use of electronic readers. Instead of requiring the use of a TWIC reader on the TSA's Qualified Technology List (QTL), owners and operators can choose to fully integrate electronic TWIC inspection and biometric matching into a new or existing Physical Access Control System (PACS).
- We clarify that this final rule only affects Risk Group A vessels and facilities, and that no changes to the existing business practices of other MTSA-regulated vessels and facilities are required.
- This final rule eliminates the distinction between Risk Groups B and C for both vessels and facilities. If and when a requirement for electronic TWIC inspection may be considered for MTSA-regulated vessels and facilities not currently in Risk Group A, we will provide an updated analysis of the costs and benefits of such an action and define new Risk Groups accordingly.
- This final rule clarifies that for Risk Group A facilities, electronic TWIC inspection is required each time a person is granted unescorted access to a secure area (a limited exception is permitted for Recurring Unescorted Access, or RUA). For Risk Group A vessels, electronic TWIC inspection is only required when boarding the vessel, even if only parts of the vessel are considered secure areas.
- This final rule eliminates the special requirement that barge fleeting facilities that handle or receive barges carrying Certain Dangerous Cargoes (CDC) in bulk be classified as Risk Group A. Barge fleeting facilities are instead classified the same as all other facilities. This change will effectively eliminate most isolated barge facilities

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[1] 71 FR 29396.

[2] 72 FR 3492.

[3] The TWIC Reader Pilot was established pursuant to Section 104 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (P.L. 109–347), which was codified at 46 U.S.C. 70105 (k)(4).

[4] 72 FR 3511.

[5] 74 FR 13360.

[6] 78 FR 17782.

from the electronic TWIC inspection requirements due to a lack of a secure area.

- This final rule increases the exemption from electronic TWIC inspection requirements to vessels with 20 or fewer TWIC-holding crewmembers and defines that number as the minimum manning requirement specified on a vessel's Certificate of Inspection.
- This final rule provides additional flexibility for ferries and other vessels that use dedicated terminals in Risk Group A to integrate their electronic TWIC inspection programs with their terminals' programs.

B. Summary of Costs and Benefits

Of the approximately 13,825 vessels, 3,270 facilities, and 56 Outer Continental Shelf (OCS) facilities regulated by MTSA, this final rule impacts only certain "Risk Group A" vessels and facilities, which currently number 1 vessel[7] and 525 facilities under the revised applicability definitions for the final rule. No OCS facilities are affected by this final rule. We estimate the annualized cost of this final rule to be approximately $22.5 million, while the 10-year cost is $157.9 million, discounted at 7 percent. The main cost drivers of this rule are the acquisition, installation, and integration of TWIC readers into access control systems. Annual costs will be driven by costs associated with updates of the list of cancelled TWICs, recordkeeping, training, system maintenance, and opportunity costs associated with failed TWIC reader transactions. The estimated annualized cost of this final rule discounted at 7 percent is approximately $5.1 million less than the estimated cost of the NPRM.

The benefits of this final rule include the enhancement of the security of vessels, ports, and other facilities by ensuring that only individuals who hold TWICs are granted unescorted access to secure areas at those locations. The main benefit of this regulation, decreased risk of a Transportation Security Incident (TSI), cannot be quantified given current data limitations. We used a risk-based approach to apply these regulatory requirements to less than 5 percent of the MTSA-regulated population, which represents approximately 80 percent of the potential consequences of a TSI. The provisions in this final rule target the highest risk entities while maximizing the net benefits of the rule.

Table 1 provides the estimated costs and functional benefits associated with the requirements of the TWIC reader.

TABLE 1—ESTIMATED COSTS AND FUNCTIONAL BENEFITS OF TWIC READER REQUIREMENTS

Category	Final Rule
Applicability	High-risk MTSA-regulated facilities and high risk MTSA-regulated vessels with greater than 20 TWIC-holding crewmembers.
Affected Population	1 vessel. 525 facilities.
Costs ($ millions, 7% discount rate)	$22.5 (annualized). $157.9 (10-year).
Costs (Qualitative)	Time to retrieve or replace lost PINs for use with TWICs.
Benefits (Qualitative)	Enhanced access control and security at U.S. maritime facilities and on board U.S.-flagged vessels. Reduction of human error when checking identification and manning access points.

For a more detailed discussion of costs and benefits, see the full Final Regulatory Analysis and Final Regulatory Flexibility Analysis available in the online docket for this rulemaking. Appendix G of that document outlines the costs by provision and also discusses the complementary nature of the provisions.

IV. Background

The MTSA provides a multi-layered approach to maritime security which includes measures to consider broader security issues at U.S. ports and waterways, the coastal zone, the open ocean, and foreign ports. Under this multi-layered system, the Coast Guard is authorized to regulate vessels and facilities, and owners and operators of MTSA-regulated vessels or facilities are required to submit for Coast Guard approval a comprehensive security plan detailing the access control and other security policies and procedures implemented on each vessel and facility. Security plans must identify and mitigate vulnerabilities by detailing the following items: (1) Security organization of the vessel or facility; (2) personnel training; (3) drills and exercises; (4) records and documentation; (5) response to changes in Maritime Security (MARSEC) Level; (6) procedures for interfacing with other facilities and/or vessels; (7) Declarations of Security; (8) communications; (9) security systems and equipment maintenance; (10) security measures for access control; (11) security measures for restricted areas; (12) security measures for handling cargo; (13) security measures regarding vessel stores and bunkers; (14) security measures for monitoring; (15) security incident procedures; (16) audits and security plan amendments; (17) Security Assessment Reports and other security reports; and (18) TWIC procedures.[8]

For the purposes of MTSA, the term "facility" means "any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States."[9] For the purposes of MTSA, the term "vessel" includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."[10] Coast Guard regulations implementing MTSA with respect to vessels[11] apply to: Mobile Offshore Drilling Units, cargo vessels, or passenger vessels subject to the International Convention for Safety of Life at Sea, 1974 (SOLAS), chapter XI–1 or Chapter XI–2; foreign cargo vessels greater than 100 gross register tons; generally, self-propelled U.S. cargo vessels greater than 100 gross tons; offshore supply vessels; vessels subject to the Coast Guard's regulations regarding passenger vessels; passenger vessels certificated to carry more than 150 passengers; passenger vessels carrying more than 12 passengers engaged on an international voyage; barges carrying, in bulk, cargoes regulated under the Coast Guard's regulations regarding tank vessels or CDC;[12] barges carrying CDC or cargo and miscellaneous vessels engaged on an international voyage; tank ships; and generally, towing vessels greater than 8 meters in register length engaged in towing barges.

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[7] We note that the number of vessels affected by the provision is low, as most "Risk Group A" vessels are exempt from the electronic TWIC inspection requirements due to a low crewmember count.

[8] *See* 33 CFR 104.405 and 33 CFR 105.405.

[9] 46 U.S.C. 70101(2).

[10] 46 U.S.C. 115; 1 U.S.C. 3.

[11] *See* 33 CFR 104.105(a).

TWIC requirements in those regulations do not apply to: Foreign vessels; mariners employed aboard vessels moored at U.S. facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities; except pursuant to international treaty, convention, or agreement to which the U.S. is a party, to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the U.S. and that is either (a) in innocent passage through the territorial sea of the U.S., or (b) in transit through the navigable waters of the U.S. that form a part of an international strait.[13]

Coast Guard regulations implementing MTSA with respect to facilities[14] apply to: waterfront facilities handling dangerous cargoes (as generally defined in 49 CFR parts 170 through 179); waterfront facilities handling liquefied natural gas and liquefied hazardous gas; facilities transferring oil or hazardous materials in bulk; facilities that receive vessels certificated to carry more than 150 passengers; facilities that receive vessels subject to SOLAS, Chapter XI; facilities that receive foreign cargo vessels greater than 100 gross register tons; generally, facilities that receive U.S. cargo and miscellaneous vessels greater than 100 gross register tons; barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated under the Coast Guard's regulations regarding tank vessels or CDC; and fixed or floating facilities operating on the OCS for the purposes of engaging in the exploration, development, or production of oil, natural gas, or mineral resources.

Those regulations do not apply to: A facility owned or operated by the U.S. that is used primarily for military purposes; an oil and natural gas production, exploration, or development facility regulated by 33 CFR parts 126 or 154 if (a) the facility is engaged solely in the exploration, development, or production of oil and natural gas, and (b) the facility does not meet or exceed the operating conditions in 33 CFR 106.105; a facility that supports the production, exploration, or development of oil and natural gas regulated by 33 CFR parts 126 or 154 if (a) the facility is engaged solely in the support of exploration, development, or production of oil and natural gas and transports or stores quantities of hazardous materials that do not meet or exceed those specified in 49 CFR 172.800(b)(1) through (b)(6), or (b) the facility stores less than 42,000 gallons of cargo regulated by 33 CFR part 154; a mobile facility regulated by 33 CFR part 154; or an isolated facility that receives materials regulated by 33 CFR parts 126 or 154 by vessel due to the lack of road access to the facility and does not distribute the material through secondary marine transfers.[15] Additionally, the TWIC requirements in those regulations do not apply to mariners employed aboard vessels moored at U.S. facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.[16]

This rulemaking applies to the above-described vessels and facilities regulated by the Coast Guard pursuant to the authority granted in MTSA, and will further increase the security value of TWIC to the nation by making use of the statutorily-mandated biometric identification function and other security features. A complete statutory and regulatory history of this rulemaking can be found in Section III.B of the NPRM published on March 22, 2013.[17]

The TWIC program falls under the access control requirements as one component of MTSA. Since April 15, 2009, the TWIC has been used throughout the maritime sector for access to secure areas of MTSA-regulated facilities and vessels. Its purpose is to ensure a vetted maritime workforce by establishing security-related eligibility criteria, and by requiring each TWIC-holder to undergo a security threat assessment from the TSA as part of the process of applying for and obtaining a TWIC.

In addition to its visible security features, the TWIC stores two electronically readable reference biometric templates (*i.e.,* fingerprint templates), a PIN, a digital facial image, authentication certificates, and a Federal Agency Smart Credential-Number (FASC–N). These features enable the TWIC to be used in different ways for (1) card authentication, (2) card validation, and (3) identity verification.

Card authentication ensures that the TWIC is not counterfeit. Security personnel can authenticate a TWIC by visually inspecting the security features on the card. An electronic reader provides enhanced authentication by performing a challenge/response protocol using the Certificate for Card Authentication (CCA) and the associated card authentication private key stored in the TWIC. The electronic reader will read the CCA from the TWIC and send a command to the TWIC requesting the card authentication private key be used to sign a random block of data (created and known to the electronic reader). The electronic reader software will use the public key embedded in the CCA to verify that the signature of the random data block returned by the TWIC is valid. If the signature is valid, the electronic reader will trust the TWIC submitted and will then pull the FASC–N and other information from the card for further processing. The CCA contains the FASC–N and a certificate expiration date harmonized to the TWIC expiration date. This minimizes the need for the electronic reader to pull more information from the TWIC (unless required for additional checking).

The card validity check ensures that the TWIC has not expired or been cancelled by TSA, or reported as lost, stolen, or damaged. Security personnel can validate whether a TWIC has expired by visually checking the TWIC's expiration date. Currently, a TSA-canceled TWIC is placed on TSA's official CCL, which is updated daily. TSA's CCL is available online at: *https://universalenroll.dhs.gov/.* Currently, the process of TWIC visual inspection does not require the security guard to compare the cardholder's name to the CCL and therefore facilities do not know when specific card holders have had their credentials cancelled and may continue to grant access unknowingly. Using an electronic reader, card validity is further confirmed by finding no match on the CCL and electronically checking the expiration date on the TWIC. Checks against the CCL may be performed electronically by downloading the list onto a TWIC reader or integrated PACS.

Identity verification entails comparing the individual presenting the TWIC to the same person to whom the TWIC was issued. Identity can be verified by visually comparing the photo on the TWIC to the TWIC-holder. Using an electronic reader, identity can be verified by matching one of the biometric templates stored in the TWIC to the TWIC-holder's live sample biometric, matching to the PACS enrolled reference biometrics linked to the FASC–N of the TWIC, or requiring the TWIC-holder to place the TWIC into a TWIC reader (currently a PIN can only be accessed using a TWIC reader with a contact interface) and entering their PIN to release the digital facial image from the TWIC. This avoids the vulnerabilities of visual inspection by using the biometric capabilities mandated by Congress.

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[12] The term "Certain Dangerous Cargoes" is defined in 33 CFR 101.105 by reference to 33 CFR 160.204, which lists all of the covered substances.

[13] *See* 33 CFR 104.105(d)–(f).

[14] *See* 33 CFR 105.105 and 106.105.

[15] *See* 33 CFR 105.105(c).

[16] *See* 33 CFR 105.105(d) and 106.105(b).

[17] 78 FR 17789.

V. Discussion of Comments and Changes to the Final Rule

In response to publication of the March 22, 2013 NPRM, the Coast Guard received over 100 comment letters, consisting of over 1,200 unique comments. Commenters provided numerous opinions, arguments, questions, and recommendations regarding the proposed TWIC reader requirements. In this section, we describe the comments received, as well as how they influenced the decisions made in this final rule. Overall, we have grouped our discussion into five sections, as discussed below.

In Section A, we address comments relating to the TWIC program generally, and electronic TWIC inspection specifically. This section includes comments relating to what the program's purpose is, how it affects security, and how it is tailored to achieve these goals in the most cost-effective and least-burdensome manner. We also discuss the risk analysis methodology in this section, in order to address comments relating to the specific types of threats the electronic TWIC inspection program is designed to combat.

Sections B through D of this discussion respond to comments relating to the operational aspects of the electronic TWIC inspection program. Most comments received were of a practical nature, especially those asking for clarifications on exactly how the regulations would apply in a large variety of specific situations. Section B addresses the specific nature of what an "electronic TWIC inspection" is, including what must be carried out, how such an inspection can be carried out using a PACS, recordkeeping requirements arising from electronic TWIC inspections, and how specific problems, such as a misplaced TWIC, would be addressed in the regulations.

Section C addresses when an electronic TWIC inspection must take place, including the specific locations on a facility or vessel where electronic readers must be located, and the parameters of an RUA configuration. Section D responds to comments relating to the classification of vessels and facilities into Risk Groups, including questions relating to barge fleeting facilities, shifting Risk Groups, and the exemption from electronic TWIC inspection requirements for vessels with a low number of crewmembers.

Items relating to the economic issues of electronic TWIC inspection are addressed in Section E. Comments on these issues related to the costs of TWIC readers, throughput times for TWIC transactions, and potential changes in security staffing needs.

Finally, Section F addresses several miscellaneous issues. Primary among these issues are comments relating to the TWIC Pilot Program and the Government Accountability Office (GAO) report on TWIC readers, issued in 2013 shortly before publication of the NPRM and accompanying analysis.[18] Additionally, this section addresses all other comments and questions that were not included in other sections.

A. General Matters Relating to TWIC

In response to the NPRM, the Coast Guard received a large variety of comments relating to the TWIC program. In this section, we begin with those comments that address the TWIC program as a whole. Multiple commenters expressed dissatisfaction with the TWIC program as a whole and suggested that it be dismantled. Many of these commenters noted that specific facilities or vessels had not been targeted by terrorists, and argued that the costs of the program were unnecessary. For a variety of reasons described extensively throughout this document, we believe that the targeted measures established in this final rule provide a cost-effective mitigation of various threats that could result in a TSI. For example, in the Regulatory Analysis (RA), we describe three hypothetical yet plausible scenarios in which an individual could gain access to a vessel or facility using a forged or stolen TWIC,[19] threats that could specifically be reduced by electronic TWIC inspection. Congress has mandated, and we agree, that preventing unauthorized individuals from accessing secure areas of the nation's transportation infrastructure is part of a necessary security program. While we also agree with many commenters who suggested that it does not prevent every possible security threat, that is not the purpose of this final rule. The purpose of this final rule is to improve security at the highest risk maritime transportation-related vessels and facilities through the use of an electronic reader.

One commenter criticized the Maritime Security Risk Analysis Model (MSRAM) threat analysis methodology, because it did not address the security issues raised by cargo containers, which include the potential for concealed threats within the containers. While we note that MSRAM does include scenarios associated with threats from cargo containers, for the purposes of the current analysis of electronic TWIC inspection, we limited our consideration to attack scenarios that require physical proximity to the intended target and for which access control would affect the ability to conduct an attack. Controlling access to a target is an essential component of security from such attacks because access control helps to detect and perhaps interdict or at least delay the attackers before they reach the target. TWIC readers enhance the reliability of access control measures, thereby increasing the likelihood of identifying and denying/delaying access to an individual or group attempting nefarious acts. For this reason, our analysis in this final rule focuses on threats that could be prevented or mitigated through use of electronic TWIC inspection. Concealed items or persons smuggled inside cargo containers are not attack scenarios that transportation worker identity verification (and electronic TWIC inspection in particular) addresses. Therefore, analyzing those scenarios would not be useful for this rule. Coast Guard regulations address security measures for those attack scenarios in other ways. Vessel and facility security plans must describe in detail how they meet all relevant security requirements, including the security measures in place for handling cargo.[20]

Multiple commenters expressed concern over the application process for obtaining a new or renewal TWIC, stating that delays have saddled workers with an undue burden. The Coast Guard understands the challenges encountered during the initial implementation of TWIC, and during the more recent surge of renewals. We note the progress that has been made in the TWIC application process since publication of the NPRM.

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[18] "Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed" (GAO–13–198).

[19] RA, p. 88.

[20] *See* 33 CFR 104.405; 33 CFR 105.405; 33 CFR part 104, subpart B; and 33 CFR part 105, subpart B.

Furthermore, we note that comments relating to the card application process are outside the scope of this rulemaking, which pertains to electronic TWIC inspection requirements only.

One commenter sought clarification as to why the TWIC was not an acceptable form of identification for entry to U.S. Navy or Coast Guard bases, and stated that the TWIC should be recognized by the agency that is requiring its use within the maritime sector. This comment is also outside the scope of this rulemaking as it does not address TWIC readers or their application to maritime rather than Federal facilities (*e.g.*, Coast Guard or Navy military bases).

One commenter expressed concern with requiring electronic readers on vessels, stating that anyone boarding a vessel would need to first pass through a facility. The same commenter stated that seafarers should not be prevented from taking shore leave, and suggested that additional regulations be put in place to avoid unlawful charges to seafarers to transit facilities for shore leave. The Coast Guard understands these concerns and has applied this rulemaking to those vessels presenting the highest risk and to those vessels which, in most cases, will regularly visit international ports not regulated under MTSA. Additionally, Congress mandated seafarers' access in section 811 of the Coast Guard Authorization Act of 2010. This mandate requires each Facility Security Plan to "provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual."[21] The Coast Guard is currently conducting a separate rulemaking to implement section 811.[22]

Several commenters requested more flexibility within this final rule rather than a "one size fits all" approach. This final rule incorporates additional flexibility for vessel and facility operators in direct response to comments in which specific requests for flexibility were made. The Coast Guard wholly agrees that there is no "one size fits all" approach for maritime security given the vast range of facility and vessel operations which, in many cases, overlap or occur in close proximity to each other. This final rule moves to a more performance-based approach by defining the criteria for electronic inspection requirements that meet the TWIC access control measures. Additionally, this rule sets flexible baseline requirements for electronic reader implementation for those vessels and facilities. We believe that the increased flexibility will decrease the burden on industry by allowing the use of existing systems with minor modifications, increasing the pool of available electronic reader technology, and allowing the individual operators to determine the approach to meet the regulatory requirement that best facilitates their business needs.

Some commenters suggested that the TWIC should be a standardized credential that can be used at multiple facilities, and that having this Federal credential should be a standard credential, rather than requiring truck drivers and others who need access to secure areas to obtain individual site-specific badges. The commenters argued that the use of the credential could alleviate redundant and overlapping background checks for workers, such as drivers, that access multiple facilities. We partially agree with this argument, but believe we should elaborate more closely on the role that TWIC and other identification credentials play in ensuring security at maritime facilities. We disagree with the suggestion that the TWIC should be used as an "all-access" credential that would override the property rights and security responsibilities of vessel and facility owners. We believe (like many other commenters), that possession of TWIC should not automatically grant an individual access to secure areas because the mere possession of a TWIC does not entitle the holder to access another person's property. The decision to grant access to a secure area of a vessel or facility appropriately lies with the owner or operator of that vessel or facility. We expect vessel and facility operators to limit access to their secure spaces to those who need such access, and to ensure that only those with a valid TWIC are granted unescorted access.

However, we note that controlling access to facilities can be carried out in several ways. For example, a facility may grant unescorted access to employees who enter the facility multiple times per day on a regular basis, and also grant access to truck or bus drivers who may only enter the facility on an occasional basis. Such a facility may use different ways to control access, and ensure that all individuals granted unescorted access possess a valid TWIC. The facility may vary how it does this depending on the operator's business needs and on the reasons why different individuals are requesting unescorted access. In this example, the facility might have one entrance for employees who use a PACS card to enter secure areas of the facility, and have another entrance for truck or bus drivers, who would present a TWIC for inspection. A single access point could also contain both a PACS reader and a TWIC reader, the latter for use by contractors or visitors who may not have been issued a facility-specific access card.

In this final rule we have granted flexibility that allows operators to use a variety of means to grant unescorted access, including the use of the TWIC as a means of identification. However, this final rule does not require operators to grant unescorted access to any TWIC-holder. As is currently the case, access to any vessel or facility is granted by the owner or operator, who has the authority and responsibility to determine if the individual requesting access has a legitimate business purpose.

1. Purpose and Efficacy of the TWIC Program

Several commenters questioned the overall efficacy of the TWIC program, questioning whether the program, with or without electronic readers, does anything to improve security. The Coast Guard understands that there have been many challenges with the implementation of the TWIC program, but does believe that TWIC has improved access control at vessels and at maritime facilities across the country. The TWIC program's single standard and nationwide recognition is intended to ensure a secure, consistent biometrically enabled credential, and facilitate an efficient, resilient, mobile transportation workforce during routine and emergency situations. However, an individual successfully obtaining a TWIC is only the first half of a two-part process. First, vessel and facility security personnel must determine that an individual possesses a valid TWIC, meaning that they have been vetted. Second, they must verify the individual's authorization for entering a vessel or facility before granting the person unescorted access. As mentioned above, the mere possession of a valid TWIC alone is not sufficient to gain the holder of that credential access to secure areas on vessels or facilities across the country. The TWIC provides a means by which a vessel or facility security officer can determine that an individual has been vetted to an established and accepted standard. This determination helps inform the vessel or facility security officer's decision to grant unescorted access to an individual. Vessel and facility personnel may then evaluate a TWIC-holder's authorization and determine whether the TWIC-holder should be granted unescorted access.

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[21] *See* the Seafarers' Access to Maritime Facilities Notice of Proposed Rulemaking (79 FR 77981, 77985 (Dec. 29, 2014)).

[22] The docket for the Seafarers' Access rulemaking is available online at *www.regulations.gov* by entering "USCG–2013–1087" in the Search box.

One commenter took issue with a statement in the NPRM that read "TWIC readers will not help identify valid cards that were obtained via fraudulent means, *e.g.*, through unreported theft or the use of fraudulent IDs."[23] The commenter stated that TWIC readers can identify cards that were obtained through unreported theft of the TWIC card by performing biometric identification of the TWIC-holder. We believe the commenter misunderstood the statement in the NPRM, which referred to the use of fake or stolen (but unreported) identification documents, such as drivers licences and birth certificates, to fraudulently obtain an authentic TWIC from the TSA. The use of such fraudulently acquired, but genuine TWICs was one issue highlighted by the GAO and by several commenters as a shortcoming in the TWIC program, and we acknowledge that the use of electronic TWIC inspection will not address that particular scenario. However, we agree with the commenter that if a valid TWIC was stolen after it was produced, electronic TWIC inspection would help to identify such a card if an unauthorized person attempted to use it. Although visual TWIC inspection could also detect such unauthorized use, electronic TWIC inspection would do so more effectively by using the TWIC's biometric and other security features.

Some commenters argued that visual TWIC inspection does not provide "adequate security," and that electronic TWIC inspection should be the standard procedure for all TWIC inspections, rather than used only for high-risk vessels and facilities. The commenter made several arguments as to why visual TWIC inspection should not be used. The commenter quoted guidance from the National Institute of Standards and Technology (NIST), issued with regard to identification for Federal employees when entering Federal facilities, which stated that visual inspection of an identification card offers little to no assurance that the claimed identity of the individual matches the identification. The commenter stated that visual inspection is a weak authentication mechanism and does not provide the level of assurance that an electronic inspection can provide. Another commenter cited the 2011 GAO report on the TWIC program, which stated that visual TWIC inspection was not a particularly effective means of identity verification.[24] While we agree that electronic TWIC inspection provides a more reliable means of identity verification than visual TWIC inspection, we disagree with the assertion that the visual inspection provides no security benefit. Many industries rely on photographic identification cards to verify a card-holder's identity before granting access to accounts or locations. Some situations may require, and justify the cost of, additional layers of security. For example, the heightened risk at Risk Group A vessels and facilities warrant the greater security afforded by electronic TWIC inspection, along with the attendant costs. As explained in this preamble and the accompanying RA, we do not believe such costs are justified for vessels and facilities outside of Risk Group A at this time.

The commenter made several other arguments relating to visual TWIC inspection. First, the commenter noted that there is no way for visual TWIC inspection to determine if a TWIC has been cancelled. While we agree that visual TWIC inspection will not perform an electronic check against the TSA's list of cancelled TWICs, we disagree with the suggestion that visual inspection has no value in performing the card validity check. Security personnel perform the basic card validity check to ensure that a TWIC has not expired by checking the card's expiration date. A TWIC reader does the same validity check electronically, but will further confirm card validity by finding no match on the list of cancelled TWICs. We explain in the RA that the costs associated with this added layer of security are warranted only for Risk Group A vessels and facilities.

The commenter also stated visual TWIC inspection creates vulnerability because it relies on a "repetitive human process," where the staff may become distracted or less attentive. While we agree generally that electronic TWIC inspection is more reliable than visual TWIC inspection, we disagree with the suggestion that visual TWIC inspection is unreliable. We are requiring TWIC readers for Risk Group A, in part, due to the potentially reduced human error that TWIC readers afford. As explained in the RA, that added benefit does not outweigh the costs associated with requiring TWIC readers outside of Risk Group A at this time.

One commenter stated that the background check does not ensure that facilities are protected from crime. The Coast Guard agrees that crimes can still be committed despite background checks, although we note that MTSA specifically prohibits certain persons with extensive criminal histories from receiving TWICs.[25] However, the purpose of requiring electronic TWIC inspection is not to prevent all crime, but to prevent TSIs at high-risk vessels and maritime facilities. In that regard, we believe that TWIC is a critical part of the layered approach to port security because it establishes a minimum, uniform vetting and threat assessment process for mariners and port workers across the country aimed at preventing a TSI. The existing TWIC Program ensures that workers needing routine, unescorted access to secure areas of facilities and vessels undergo lawful status checks (for non-U.S. citizens) and that they are vetted against a specific list in statute of terrorism associations and criminal convictions.[26] It provides a standard baseline for determining an individual's suitability to enter the secure area of a vessel or facility regulated under the MTSA. We note that the program does not exclude everyone with a criminal record and that most, but not all, of the permanent disqualifying crimes for a TWIC can be waived in extraordinary circumstances.[27] However, there are aggressive procedures to remove a TWIC from any TWIC-holder found to have committed one of these crimes after receiving their TWIC, or to remove a TWIC from a TWIC-holder who is later added to any of the terrorism associated databases.

Multiple commenters suggested that the risk analysis for the NPRM did not adequately address cargo containers and the related cargo container facilities. One commenter suggested that container terminals were the primary focus of the enactment of the MTSA and SAFE Port Act, yet they are not subject to the highest level of TWIC scrutiny. The Coast Guard disagrees that container terminals were the primary focus of the Acts, noting that there was substantial discretion permitted by the statutory language to implement electronic TWIC inspection requirements. We reiterate that with regard to threats carried within cargo containers, electronic TWIC inspection is not particularly effective for threat mitigation since scenarios involving container contents (*e.g.*, weapons, personnel) in an attack in the United States do not require access to the container inside the secure area. The risk analysis evaluated the consequence of an attack on the maritime facilities themselves, deeming it reasonable to confine attack scenarios to the facility because offsite scenarios (*e.g.*, transfer of container contents) are not mitigated by TWIC, but are instead the focus of additional layers of protections in the larger MTSA regulatory regime. Based on the MSRAM calculations relating to the effect of an attack on a cargo container facility, the efficacy of electronic TWIC inspections in disrupting such attacks, and considering the costs of requiring electronic TWIC inspections, we arrived at the conclusion that it would not be the most cost-effective approach to improving public safety to require electronic TWIC inspection at these facilities at this time. We would refer interested parties to the accompanying RA for a detailed discussion of alternative regulatory approaches considered in this rulemaking. Furthermore, we note that under existing guidance, any facility not covered by this final rule may implement electronic TWIC inspection on a voluntary basis for any reason.

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[23] 78 FR 17787.

[24] GAO–11–657, "Transportation Worker Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives"

[25] *See* 46 U.S.C. 70105(c) for the list of disqualifying criminal offenses.

[26] 46 U.S.C. 70105 and 49 CFR 1572.103.

[27] 46 U.S.C. 70105 and 49 CFR part 1515.

One commenter stated that the classification for large general cargo container terminals was counterintuitive, because disruption to any one of these facilities could have significant negative consequences for the nation's economy. We understand the commenter's perspective. However, for this rule, as part of the MSRAM analysis, we evaluated the risk of a TSI that (1) occurs at cargo container facilities and (2) would be less likely to occur through TWIC reader implementation, and for these scenarios, the likelihood of long-term disruptions to the nation's economy is assessed to be minimal.

One commenter suggested that not placing container terminals in Risk Group A, and thus not requiring electronic TWIC inspection, would threaten the supply chain by allowing TWIC-holders, who have subsequently been determined by the TSA to be a security threat to the United States, to have unescorted access to the nation's critical infrastructure with impunity. We disagree that not placing container facilities in Risk Group A is tantamount to exposing those facilities to security threats. We note that the general TWIC requirements located in § 101.515, which prohibit those who do not hold a valid TWIC from receiving unescorted access to a secure area, is still effective for these facilities. Container facilities may voluntarily institute requirements for electronic verification, for example, for business reasons. Furthermore, such facilities are subject to spot checks by the U.S. Coast Guard where such invalidated TWIC-holders could be discovered through the use of portable TWIC readers by Coast Guard personnel.

One commenter suggested that terrorists might use a small facility to transport a weapon, thus bypassing electronic TWIC inspection programs. Pursuant to existing requirements, unescorted access to a secure area of any MTSA-regulated maritime facility requires a TWIC, so all workers seeking unescorted access, not just those at high-risk facilities, are subject to background checks. However, we note that electronic TWIC inspection is not designed to directly protect against smuggling, including the smuggling of terrorist weapons. Electronic TWIC inspection is designed to ensure that unauthorized persons, who have not been provided a TWIC, are not provided unescorted access to high-risk vessels and facilities. Many, if not most, smuggling scenarios do not require adversary access to secure areas for success, and thus the enhanced access control afforded by electronic TWIC inspection does little to reduce the risk for these scenarios.

One commenter added that facilities are poor targets for terrorist attacks and thus, screening workers on those facilities adds little value. We disagree, and note that we have tailored this rule to specifically encompass only those maritime facilities where the dangers of a TSI are heightened, such as those that handle or receive vessels carrying CDC in bulk. We have determined that the facilities in Risk Group A could be attractive targets for terrorist attacks due to the substantial loss of life and environmental effects that could result from a TSI. Furthermore, we tailored the requirements to only require electronic TWIC inspection when such inspection would have a substantial effect on reducing the likelihood of such an attack (the "TWIC utility" prong of the risk analysis, described in detail in the NPRM). *See* 78 FR 17791.

2. Risk Analysis Methodology

Multiple commenters expressed concern with the risk analysis for this rulemaking. While we have considered the commenters' concerns, our risk analysis model remains unchanged from that proposed in the NPRM. We believe that the existing risk analysis model, which considered a wide range of targets, attacks, and consequences, remains the most comprehensive and logical means available to implement the electronic TWIC inspection program. In this process, the Coast Guard analyzed 68 distinct types of vessels and facilities using the MSRAM database based on their purposes or operational descriptions. The Coast Guard initially separated this list of vessels and facilities into proposed Risk Groups A, B, and C in the ANPRM and have ultimately used this baseline to inform the classification of Risk Group A vessels and facilities in this final rule. We identify these vessels and facilities as those that can best be protected by electronic TWIC inspection.

The risk analysis methodology used in this rulemaking consists of three distinct analytical factors. The first factor, which we described in the NPRM as the "maximum consequences to [a] vessel or facility resulting from a terrorist attack," is the direct consequence of a type of attack that could be prevented or mitigated by use of electronic TWIC inspection. This factor was assessed for each class of vessel and facility. The second factor, which we described as the "criticality to the nation's health, economy, and national security," considered the impact of the loss of a vessel or facility beyond the direct consequences, taking into consideration regional or national impact on health and security. Finally, we considered TWIC utility, which we describe as the effectiveness of the TWIC program in reducing a vessel or facility's vulnerability to a terrorist attack."

It is important to note that the electronic TWIC inspection program is not the only security measure protecting vessels and maritime facilities, and is not designed to counter every conceivable threat to them. In the preliminary RA, we explained that there were three specific attack scenarios most likely to be mitigated by electronic TWIC inspection, and thus used in our analysis. These scenarios were: (1) A truck bomb, (2) a terrorist assault team, and (3) an explosive attack carried out by a passenger or passerby (with the specific caveat that the terrorist is not an "insider").[28] While several commenters criticized certain aspects of the TWIC program for not countering additional threats, we note that benefits outside the scope of the above threats were not considered to be likely successes of the TWIC program and were not considered in our analysis. One commenter suggested that the truck bomb scenario was unrealistic, as it would be easier to place a bomb in a container itself. We note that these are two distinct scenarios, and that the risk identified in the latter scenario is one that is not mitigated by electronic TWIC inspection.

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[28] Preliminary RA, p.72.

The first factor of the analysis was the most comprehensive, which was to determine the direct primary and secondary consequences of the total loss of a vessel or facility. To conduct this stage of the analysis, we used MSRAM data. MSRAM collects data from a wide variety of vessels and facilities and includes calculations of damages for each individual vessel or facility. The damages incorporated into the MSRAM analysis include: (1) Death and serious injuries; (2) direct property damage and the costs of business interruptions; (3) environmental consequences; (4) national security consequences; and (5) secondary economic consequences, such as damage done to the supply chain.[29] To finish the first stage of analysis, we aggregated the MSRAM data from the individual vessels and facilities into averages for each of the 68 identified classes.

The second factor in the analysis considered the impact of the total loss of the vessel or facility beyond the immediate local consequences. This involved examining the regional and national effects of such a loss on the state of human health, the economy, and national security. The third factor in the analysis focused on the effectiveness of the TWIC program in actually reducing the vessel or facility class' vulnerability to a terrorist attack. In instances where electronic TWIC inspection would substantially reduce the effect or likelihood of an attack, this factor was assigned a greater value.

Once the three analytical factors were determined, the Coast Guard combined the scores using the Analytic Hierarchy Process (AHP), developing a total score that combined the severity of an attack and the effectiveness of the TWIC program in countering that attack for each of the classes of vessels and facilities. These overall rankings were then used to determine the Risk Groups used in developing this rulemaking. We believe that this approach used in this risk analysis methodology is highly effective, and represents the best method available for assessing the benefits of the electronic TWIC inspection program to the specific vessels and facilities under consideration.

One commenter suggested that the Coast Guard should not finalize this rule, and that a panel of private industry representatives should be included in an objective review of where the risks and vulnerabilities are in order to develop the best tool for mitigation. The Coast Guard has taken a collaborative approach toward developing this final rule, and has considered information from numerous stakeholders in this rulemaking, including the large number of comments on both the ANPRM and NPRM. As a result, the Coast Guard has amended this final rule, targeting the affected population to those vessels for which the use of electronic TWIC inspection provides the greatest benefit at minimum cost. This would not have been possible without the extensive public input received.

One commenter suggested that previous risk assessments of their operation had never identified a scenario in which rogue employees played a role. We do not agree with the commenter that this weakens the case for the implementation of electronic TWIC inspection requirements. We note that "rogue employees" (no precise definition of this term was supplied, but we assume it means an employee who intends to carry out a TSI) are unlikely to be a threat mitigated by this final rule. This final rule is primarily designed to identify and intercept those adversaries who are not employees, but are attempting to use a stolen or otherwise invalid card to gain access to a secure area. A "rogue employee" with a valid TWIC would not be intercepted by electronic TWIC inspection. The "rogue employee" scenario is partially addressed by the security threat assessment that each employee must undergo before obtaining a TWIC, and is also addressed by other layers of security. For example, 33 CFR 104.285 and 105.275 require owners and operators to have the capability to continuously monitor their vessels and facilities through the use of lighting, security guards, waterborne patrols, automatic intrusion devices, or surveillance equipment.

The same commenter asserted that there are no facts, objective risk assessments, or examples provided to support how a TWIC reader would enhance security absent a known risk or vulnerability. Additionally, the commenter broadly suggested that an owner or operator should be allowed to self-assess and determine its own risk group category after taking into account the security measures already in place at their own location. We disagree with both comments. MSRAM is a fact-based, objective tool for assessing TSI risk in the maritime domain. MSRAM incorporates specific examples of vessels and facility types and various attack modes. As explained in great detail in the ANPRM, NPRM, and elsewhere in this preamble, MSRAM is an analysis tool designed to estimate risk for potential terrorist targets. We consider MSRAM to be the best available tool for determining which vessels and facilities should be considered high-risk for the purpose of TWIC reader requirements. Because electronic TWIC inspection is generally more reliable than visual TWIC inspection, TWIC readers enhance access control more than visual inspection, increasing the likelihood of identifying an aggressor and denying access to secure areas. While the above rationale applies generally to Risk Group A, the Coast Guard also recognizes that the nature or operating conditions of certain vessels and facilities may warrant a waiver from certain regulatory requirements. The existing regulations in 33 CFR 104.130 and 105.130 provide that owners and operators may apply for a waiver of any requirement of the security regulations in 33 CFR parts 104 and 105 (including the TWIC reader requirements) in appropriate circumstances and where the waiver will not reduce overall security.

Several commenters noted that while the Coast Guard used the MSRAM data to conduct its risk analysis, a number of TWIC Pilot Program participants were not contacted during this assessment. They argued that these participants could have provided local knowledge to produce supportable conclusions relative to risks and risk mitigation strategies in particular locations. We believe that these commenters misunderstand how MSRAM data were used. The Coast Guard carefully reviewed the pilot project in writing this final rule. MSRAM datawere used to help determine the consequences of a TSI. This was one factor used in determining the overall risk to the various classes of facilities analyzed in the Coast Guard's risk analysis. The Coast Guard uses MSRAM in a variety of risk analysis applications and does not engage in discussion with each participant every time the data are utilized.

Some commenters also argued that they were the subject of several counterterrorism studies, and that these studies had not identified TWIC as risk mitigation tool, nor had they identified a scenario in which an employee bringing harm to a ferry was an identified vulnerability. These studies were not provided by the commenter but, from their descriptions, seem to have focused on risks other than those posed by persons impersonating employees. We note that while previous studies may not have identified TWIC as a risk mitigation tool, we have considered various scenarios in which electronic TWIC inspection would mitigate risk, and used them as the basis for our risk analysis. Furthermore, we note that electronic TWIC inspection is not designed to prevent a valid and cleared employee from bringing harm to a vessel or facility. Instead, it is specifically designed to prevent access to a secure area by an unauthorized person who is attempting to gain access by using a stolen or counterfeited TWIC. We believe that electronic TWIC inspection is an appropriate and cost-effective tool to mitigate such risks.

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[29] Preliminary RA, p.75.

B. Electronic TWIC Inspection

Electronic TWIC inspection is the process by which the TWIC is authenticated, validated, and the individual presenting the TWIC is matched to the stored biometric template. This process consists of three discrete parts: (1) Card authentication, in which the TWIC at issue is identified as an authentic card issued by the TSA; (2) the card validity check, in which the TWIC is compared to the TSA-supplied list of cancelled TWICs [30] to ascertain that it has not been revoked, and is not expired; and (3) identity verification, in which the TWIC is matched to the person presenting identification through use of a biometric template stored on the TWIC.

The purpose of electronic TWIC inspection is to improve the inspection of TWICs, as compared to visual TWIC inspection. We note that visual TWIC inspection accomplishes the same three tasks as electronic TWIC inspection, but in different ways, and generally not as thoroughly or reliably as electronic TWIC inspection. Visual card authentication is accomplished by visually inspecting the security features on the card (such as the watermark). A visual card validity check is accomplished by checking the expiration date on the face of the card, although there is no way to visually check if the TWIC has been revoked by the TSA since it was issued. Finally, visual identity verification is conducted by comparing the photograph on the TWIC with the individual's face.

Electronic TWIC inspection improves upon the visual inspection checks, and adds two additional benefits. In electronic TWIC inspection, the authenticity of the card is verified by issuing a challenge/response to the TWIC's unique electronic identifier, called a Card Holder Unique Identifier (CHUID). The card's validity is determined by checking the TWIC against the most recently updated list of cancelled TWICs. Finally, the identity of the TWIC-holder is verified by matching the biometric template stored on the TWIC to the individual's biometrics. Each of these methods is an improvement upon visual TWIC inspection as the electronic TWIC inspection uses methods of validation that are not easily manipulated through means such as counterfeiting or altering the surface of the TWIC. Additionally, electronic TWIC inspection ensures that the card being presented has not been invalidated by a means other than being expired, such as the card having been reported lost, or the TWIC being revoked due to a criminal conviction.

TWIC inspection, either electronic or visual, provides a baseline of information to determine who may be provided unescorted access to secure areas of MTSA-regulated vessels and facilities. While not every TWIC-holder is authorized unescorted access, the TWIC ensures that facility security personnel do not grant unescorted access to individuals that have not been vetted or have been adjudicated unfit for access to secure areas.

Several commenters suggested that the sole purpose of TWIC is for a worker to be vetted through security and criminal checks, and that access control is not a purpose of the TWIC program. We disagree with this description of a fundamental principle of the TWIC program. The controlling statute, 46 U.S.C. 70105(a)(1) reads, in part, "[t]he Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area . . . unless the individual holds a transportation security card issued under this section. . .". This is a clear mandate for an access control program. We have implemented this mandate by requiring maritime workers to obtain a TWIC, and by requiring owners and operators to inspect each individual's TWIC prior to granting access to secure areas. Using the biometric template, TWIC provides a highly secure means for security personnel to verify the identity of an individual seeking access to a secure vessel or facility and implementing this core requirement of the MTSA.

In this final rule, we are revising the regulatory text to add flexibility and more accurately reflect the electronic TWIC inspection process. In the NPRM, we did not describe the process as "electronic TWIC inspection," but stated in proposed § 101.520(a) that "all persons must present their TWICs for inspection using a TWIC reader, with or without a . . . PACS. . .". [31] In this final rule, we are modifying the process from presentation of a TWIC to a TWIC reader to the concept of electronic TWIC inspection. As stated below, and as defined in section 101.105 of this final rule, "Electronic TWIC inspection" means the process by which the TWIC is authenticated, validated, and the individual presenting the TWIC is matched to the stored biometric template. In doing so, we have laid out the exact requirements for this process in revised § 101.520.

In this section, we address the comments and concerns submitted in response to the NPRM, and describe in detail how electronic TWIC inspection will work in a wide variety of operational situations. Table 2 provides a summary of the acceptable implementation options for owners and operators to perform electronic TWIC inspection. The owner or operator of a vessel or facility must ensure the options chosen to meet the electronic TWIC inspection requirements perform the required card authentication, card validity, and identity verification required in revised § 101.520.

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[30] We note that at this time, this list is the Cancelled Card List (CCL). However, there are also several specific Certificate Revocation Lists maintained by TSA, which differ from the CCL. In order to provide a regulation that is flexible in terms of future technology adaptations, in this final rule, we have described the list in the regulatory requirement generically as the "list of cancelled TWICs." *See* sections 101.520(b) and 101.525 of the final rule regulatory text. This allows TSA to continue to use the CCL, but will also allow additions from various Certificate Revocation Lists if and when that becomes feasible and efficient. Any such change in the list of cancelled TWICs would be a "back end" change on TSA's part and would not impact the burdens or operations of private parties, who would still only be required to check a TWIC against the list as part of the card validity check. In this document, we generally refer to the "list of cancelled TWICs" when referring to the regulatory requirements in the final rule, while still using the "CCL" terminology when discussing comments on the Cancelled Card List or discussions in the NPRM that used that terminology.

[31] 78 FR 17829.

TABLE 2—IMPLEMENTATION OPTIONS

Option	Description
TWIC Reader (QTL)	Owner/operator uses a TWIC reader listed on TSA's QTL. To gain entry to a secure area, employee presents TWIC and biometric for electronic inspection.
TWIC Reader (non-QTL)	Owner/operator uses a TWIC reader that adequately performs the three required electronic checks (card authentication, card validity check, identity verification). To gain entry to a secure area, employee presents TWIC and biometric for electronic inspection.
Transparent Reader	Similar to non-QTL TWIC reader, except the Transparent Reader does not independently perform card validation, card authentication, and identity verification. Instead, the Transparent Reader transmits information from the employee's TWIC and biometric to a back end system containing software that performs the TWIC check. Once the TWIC check is complete, the back end system shall perform what processes are required to either grant or deny access.
PACS (with facility access card).	Employee is issued a facility access card after initially registering employee's TWIC and biometric into the facility's access control database. To gain entry to a secure area, employee presents facility access card and biometric for electronic inspection to match against employee's record in the facility's database.
PACS (with biometric only)	Employee's TWIC and biometric are initially registered into the facility's access control database. To gain entry to a secure area, employee presents biometric (e.g., fingerprint) for electronic inspection to match against employee's record in the facility's database.

1. Electronic TWIC Inspection Does Not Necessarily Require a TWIC Reader

Many commenters expressed concerns regarding the costs of purchasing, installing, and using TWIC readers that have been approved by the TSA. They argued that the costs of the TWIC readers were high, and that there were problems with the reliability of TWIC readers and cards. Many commenters requested that the Coast Guard extend guidance issued in Navigation and Vessel Inspection Circular (NVIC) 03–07 and Policy Advisory Council (PAC) Decision 08–09, change 1, in which we outlined how an existing PACS could be used in lieu of a TWIC reader until the TWIC final rule was issued.

In NVIC 03–07, we described how TWIC could be incorporated into an access control system even if the person accessing the secure area did not physically use the TWIC as an access control card. We stated that:

> *Example:* A facility employee who possesses a valid TWIC is registered into the facility's access control database and is issued a facility access card after the TWIC is verified visually as described in 3.3 a. (7) [of NVIC 03–07]. To gain entry into a secure area, the employee inserts or scans his/her facility access card at a card reader, which verifies the access card as a valid card for the facility. The TWIC does not need to be used as a visual identity badge at each entry once the facility-specific card is issued. The card reader then verifies the individual by matching the facility access card to the individual's record in the facility database and allows access to secure areas as dictated by the permissions established by the owner/operator in the access control system. By virtue of the fact that the employee would not be issued a vessel or facility-specific card without first having a TWIC, the requirement to possess a TWIC for unescorted access to secure areas is met.[32]

Many commenters noted, and we are aware that, the proposed regulatory text in the NPRM was worded in such a way that rendered this method of compliance impossible. The proposed regulatory text in § 101.520(a)(1) stated "Prior to each entry, all persons must present their TWICs for inspection using a TWIC reader, with or without a physical access control system (PACS), before being granted unescorted access to secure areas." [33] Similarly, proposed §§ 101.525 and 101.530 required visual inspections of TWICs before permitting access. Many commenters took issue with the change in approach from current requirements as described in the NVIC.

In this final rule, we are revising the regulatory text to allow electronic TWIC inspection to be conducted by either a TWIC reader or a PACS at vessels and facilities. This regulatory language will supersede previous guidance documents such as PAC 08–09, change 1 and NVIC 03–07. Under the new language in revised section 101.520 we are providing greater flexibility on the type of equipment used, as long as the three parts of electronic TWIC inspection are performed satisfactorily.

Multiple commenters discussed the scenario where an owner or operator has a PACS which cross-checks successful electronic TWIC inspections against employment records and other internal security systems and records to verify that the cardholder works for the company, holds current certifications, and should be allowed into the facility. As explained in this document in Section V.B., such a system could meet the requirements for electronic TWIC inspection as revised for this final rule.

Two commenters at a public meeting suggested that if a facility could prove its PACS is superior to the TWIC requirements, then the facility should be exempt from them. Similarly, other commenters suggested alternatives the Coast Guard could require, including a color-coded system analogous to the former Homeland Security Advisory System. In this final rule, we are not providing a generalized exemption from electronic TWIC inspection requirements as suggested by the commenters. However, as explained, such requirements can be performed by a PACS, thus potentially eliminating the need for these particular commenters to purchase entirely new equipment or the need for an exemption from the electronic TWIC inspection requirements.

Multiple commenters stated that it would be more cost effective in some cases to purchase one or two stationary TWIC readers, but also to purchase several portable TWIC readers for multiple temporary gates or entrances. One commenter asked whether the final rule requires fixed card readers at every point of access, even a temporary or infrequently used one. The same commenter asked whether portable TWIC readers would meet the TWIC reader requirements on an OCS facility. We clarify that neither the NPRM nor final rule required stationary TWIC readers. The final rule, as described above, allows for flexibility in terms of equipment.

The arrangements the commenters suggested could all be accommodated by this final rule. In this final rule, we are removing prescriptive requirements regarding the permanence, type, and placement of electronic readers. If a vessel or facility has an existing access control system, of any variety, whose electronic readers perform the requirements of the electronic TWIC inspection (including identity verification), and are approved under the relevant security plan, then the PACS is permissible.

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[32] Enclosure (3) to NVIC 03–07, p. 1515 (Available in the docket by following the instructions in the **ADDRESSES** section of this preamble).

[33] 78 FR 17829.

In response to the many comments we received on this issue, in this final rule, we are substantially altering the TWIC reader requirements to accomplish the goals set out by the TWIC reader program, but in a manner that provides more flexibility in terms of how those goals are met. The requirements in this final rule are designed to allow as much flexibility in design of an access control system as possible while still achieving the goals of the TWIC reader program.

We believe that the increased flexibility offered by the revised, performance-based regulations is responsive to the many commenters who described existing access control systems that they believe are better suited for their individual vessels and facilities than those proposed in the NPRM. Under these final regulations, a system that accomplishes the goals of the TWIC program and uses the three electronic checks mandated by the regulation will be considered by the Coast Guard when reviewing the security plans. As long as the Coast Guard agrees that the proposed security plan accomplishes the goals in a robust fashion, we will not limit the choices of the means to do so.

2. Integrating Electronic TWIC Inspection Into a PACS

NVIC 03–07 and PAC 08–09 change 1 explain that they are valid guidance until a TWIC reader final rule is issued, but many commenters requested that these documents remain valid even after the final rule becomes effective. Because this final rule significantly changes the TWIC inspection process for Risk Group A vessels and facilities, the TWIC-specific guidance provided in those documents will not continue to apply to Risk Group A. However, because we are not making any changes to the TWIC requirements for those vessels and facilities not in Risk Group A, the guidance documents still retain their validity with regard to those entities. We will update and post these guidance documents online at *https://homeport.uscg.mil/* prior to the effective date of this final rule.

In this final rule, we no longer require facility and vessel operators to use a TWIC reader listed on the QTL each time a person is granted unescorted access to a secure area. Instead, we are permitting multiple options as previously described, including the use of a PACS approved in the required Facility Security Plan (FSP) or Vessel Security Plan (VSP), if the PACS can perform the electronic TWIC inspection requirements.

Example: A facility employee who possesses a valid TWIC is registered into the facility's access control database and is issued a facility access card after the TWIC is verified in accordance with 33 CFR 101.530. After the TWIC and holder of the TWIC are validated to ensure the TWIC is issued by TSA and the holder of the TWIC is bound to the TWIC, a biometric template of the employee is taken and stored on the facility access control system. To gain entry into a secure area, the employee inserts or scans his or her facility access card at a card reader, which verifies the access card as a valid card for the facility. The card reader then matches the facility access card to the employee's record in the facility database. A biometric sample from the employee is taken and matched to the associated biometric template stored on the facility's access control system. The facility's access control system then checks the TWIC's CHUID to assure that the TWIC is still valid (unexpired) as well as checks the list of cancelled TWICs to ensure that it has not been cancelled for any other reason. Upon verification that the TWIC is valid and the employee's biometric matches the associated template, the facility access control system allows access to secure areas as dictated by the permissions established by the owner or operator in the access control system. By virtue of the fact that the employee would not be issued a facility-specific card without first having a TWIC, the requirement to possess a TWIC for unescorted access to secure areas is met. The requirement for a biometric match of the employee is met through the performance of a match to the biometric template stored on the facility access control system.

We note that the requirement for electronic TWIC inspection can be met even without the use of any sort of card reader, so long as the three parts of the electronic TWIC inspection are met. Such a system could be designed to use an individual's biometric check as a means of identification, such as described below.

Example: A facility employee who possesses a valid TWIC is registered into the facility's access control database and a biometric template of the employee is taken and stored on the facility access system. (We note that this is done after the TWIC and holder of the TWIC are validated to ensure the TWIC is issued by TSA and the holder of the TWIC is bound to the TWIC). To gain entry into a secure area, the employee presents a biometric (*e.g.*, fingerprint) to a biometric reader connected to the facility's access control system. The access control system identifies the employee from the fingerprint and then matches it to the biometric template and the employee's TWIC information in the facility database. The facility's access control system then checks the TWIC's CHUID to assure that the TWIC is still valid (unexpired) as well as checks the list of cancelled TWICs to ensure that it has not been revoked for any other reason. Upon verification that that the TWIC is valid and the employee's biometric matches the associated template, the facility access control system allows access to secure areas as dictated by the permissions established by the owner or operator in the access control system. By virtue of the fact that the employee would not be entered into the facility's access control system without first having an authenticated TWIC, the requirement to possess a TWIC for unescorted access to secure areas is met. The requirement for a biometric match of the employee is met through the performance of a match to the biometric template, in this case a fingerprint stored on the facility access control system.

Additionally, we note that although a biometric template is the particular biometric measurement used in the TWIC application process, an alternative biometric may be used to perform the identity verification check required by the regulations so long as the method is approved in the security plan. For example, as two commenters suggested, a vascular scan could be stored on a facility's access control system instead of a fingerprint, which could be useful in situations where some employees have difficult-to-read fingerprints.

a. List of Acceptable TWIC Readers

In the NPRM, the Coast Guard proposed that only certain TWIC readers would be permitted to be used for purposes of electronic TWIC inspection. As stated above, proposed § 101.520(a)(1) read, "[p]rior to each entry, all persons must present their TWICs for inspection using a TWIC reader, . . .". The term "TWIC reader" was defined in proposed § 101.105 as "an electronic device listed on TSA's Qualified Technology List . . .". Thus, by operation of the proposed regulatory text, TWIC readers listed on the QTL would be required at access points to secure areas on facilities and at the entrances to vessels requiring electronic TWIC inspection.

TSA had not published the QTL at the time of publication of the NPRM. Thus, in its discussion regarding the types of approved TWIC readers, the NPRM reiterated guidance from PAC–D 01–11 regarding the use of TWIC readers to meet the existing regulatory requirements for effective identity verification, card validity, and card authentication.[34] Specifically, in that guidance document, we stated that:

> In accordance with 33 CFR 101.130, the Coast Guard determines that a biometric

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[34] 78 FR 17805.

match using a TWIC reader from the TSA list of readers that have passed the Initial Capability Evaluation (ICE) Test (available at: *http://www.tsa.gov/assets/pdf/twic_ice_list.pdf*) to confirm that the biometric template stored on the TWIC matches the fingerprint of the individual presenting the TWIC meets or exceeds the effectiveness of the identity verification check.

The NPRM also noted that, in accordance with the guidance, "TWIC readers allowed pursuant to PAC–D 01–11 may no longer be valid after promulgation of a TWIC reader final rule, and DHS will not fund replacement of TWIC readers." [35]

In recognition of advancing technology and standards, and to provide further flexibility to the end user that may meet business specific needs, this final rule does not require a TWIC reader from the TSA's QTL, accessible online at *http://www.tsa.gov/stakeholders/reader-qualified-technology-list-qtl*. Instead, the Coast Guard is permitting multiple options for the implementation of electronic TWIC inspection. The first option for meeting these needs within this final rule remains the mechanism proposed in the NPRM, which is the use of TWIC readers listed on the QTL. These TWIC readers are defined as "Qualified Readers." We believe that this option is most appropriate for vessels or facilities that currently do not conduct electronic TWIC inspection and are seeking a TWIC reader determined to be in conformance with the TWIC Reader Hardware and Card Application Specification, available in the online docket for this rulemaking. The QTL continues to remain useful for this and other purposes.

A similar option would be to use a TWIC reader that is not on the QTL. While such electronic readers are not prohibited by this rule, they must still meet the performance requirements of § 101.520. This performance-oriented option is intended to provide more options to users to meet their individual needs while still relying on the TWIC as an access control credential.

Another option would be to use an electronic reader or combination of separate devices—such as proximity readers, biometric readers, and PIN pads—that would transmit the information from the TWIC and individual seeking access to software that performs the card authentication, card validity check, and biometric identification functions required in § 101.520. We refer to this arrangement as a "Transparent Reader." In this case, for example, a Transparent Reader would read the information from the TWIC along with the biometric sample provided by the individual and transmit it to a back end system containing software that performs the TWIC check. Once the TWIC check is complete, the back end system would perform what processes are required to either grant or deny access. This option may be highly popular with facilities that have already invested in electronic reader infrastructure and high tech software systems that may not be on the QTL. In this case, much as a situation with a PACS, the operator may have to add a biometric component, if not already in place, and modify software to include TWIC compatibility, but would not have to replace the entire system.

The last option, described in detail above, would be the use of an existing PACS, with the inclusion of biometrics, with a facility-specific access card that uses the TWIC as the baseline credential. This is purely a performance requirement, and would not require the use of government-approved equipment. In this case, the PACS would be required to match the TWIC against the list of cancelled TWICs and, if positively matched, automatically cancel the facility access card so as to not allow unescorted access to secure areas of the facility.

Several commenters provided comments that addressed the specific types of approved card readers, but we believe that many of the concerns raised by commenters are resolved by the Coast Guard moving to a more flexible series of options for conducting electronic TWIC inspection. One commenter in a public meeting expressed concern that there was not an approved card reader which he could use for cost estimates. We note that the TSA now has a list of approved TWIC readers, which is available on the Coast Guard's Homeport site.[36] One commenter suggested that this rule was not in alignment with the TSA's Request for Information regarding development of the QTL. We disagree, and note that the Coast Guard and TSA worked closely in developing and implementing the electronic TWIC inspection requirements. Furthermore, we note that with the additional flexibility afforded by this final rule, equipment to conduct electronic TWIC inspections is available at a wide variety of prices, depending on the manner in which electronic TWIC inspection is conducted. Additional information on cost estimates is provided in the final RA accompanying this final rule.

Additionally, one commenter requested that software be included on the QTL. We note that the list of TWIC readers on the QTL includes TWIC reader and software pairings. Beyond the physical aspects of TWIC reader testing in terms of environmental or drop testing, a large portion of what is tested in the QTL process is the software.

Other commenters suggested that, based on the TWIC Pilot Program, TWIC reader technology is still not ready for requiring TWIC readers at facilities, and requested that this final rule be delayed. Similarly, one commenter recommended that the Coast Guard only proceed with the rule if it was confident in the reliability of existing TWIC readers. We believe that not only has technology continued to improve, but also additional flexibility has been afforded in this final rule, both of which should alleviate problems with specific TWIC readers used in the pilot. Vessels and facilities required to conduct electronic TWIC inspection can choose from a wide variety of means so as to meet their budget and operational needs. Furthermore, the flexibility built into this final rule allows for future advancement of both card and reader technologies in a manner that will provide for further reductions in impact on business operations of the maritime industry.

b. PIN Pads and Biometric Input Methods

One issue raised in the ANPRM was the use of PINs as part of the identification process. We note that upon getting a TWIC, each TWIC-holder is required to remember a PIN. As proposed in the NPRM, under most circumstances, the TWIC-holder would not be required to provide the PIN when seeking access to secure areas, except as a backup measure when the TWIC-holder's biometric template is unreadable. For this reason, there is no requirement that access control systems have the capability to accept a PIN.

Comments relating to the use of PINs were generally negative. Several commenters specifically argued against the use of PINs. Some commenters stated that because the PINs are rarely used, they are seldom remembered by TWIC-holders. We agree that rarely-used PINs will likely be forgotten, and thus the only people who would likely remember their PINs are those who use them regularly, such as those with impaired biometrics. Similarly, one commenter stated that 100 percent of cardholders would need to visit one of the TWIC enrollment centers to reset or establish a new PIN in the event that the Coast Guard required PIN entry, implying that without regular use of PINs, they are quickly forgotten.

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[35] 78 FR 17805.

[36] We have also included the current version of the list in the docket USCG–2007–28915.

PINs would not be required or permitted as a substitute for biometric identification of most users. Instead, this rule provides that PINs are available as an alternative only for individuals whose biometrics can not be read. The Coast Guard recognizes that for some people, taking a biometric read can be problematic. For example, people with severely injured fingers are often unable to have their fingerprints read. For such cases, the final rule provides an alternative means to ensure identity verification. As stated in § 101.520(c)(2), the use of a PIN plus a visual TWIC inspection is an acceptable alternative to a biometric match for individuals who are unable to have their biometric template captured at enrollment or who have unreadable biometrics due to injury after enrollment. For that reason, owners and operators may find it expedient to include an electronic reader with a PIN pad in at least some of their access control locations to accommodate people with unreadable biometrics.

3. Comments Related to Troubleshooting TWIC

This section elaborates on certain programmatic issues relating to electronic TWIC inspection, specifically, how to address problems arising if either the electronic reader or access card malfunctions. In this section, we elaborate and expand on the provisions described in the NPRM as well as address issues raised by commenters.

In the NPRM, the Coast Guard proposed regulations in § 101.535 that laid out requirements for TWIC inspection in special circumstances where a malfunction in the TWIC inspection system has occurred. In paragraph (a), we described how access could be granted in the event of a lost, stolen, or damaged TWIC card. In paragraph (b), we proposed how access could be granted in the event that a person's biometric template could not be read due to either technology malfunction or the inability of an individual to provide a biometric template. In paragraph (c), we proposed that in the event of a TWIC reader malfunction, an individual could still be granted unescorted access to secure areas for a period not to exceed 7 days, provided that individual has been granted such unescorted access in the past and is known to possess a TWIC. We note that the period in paragraph (c) was extended to 37 days in CG–FAC Policy Letter 12–04.

Because the final rule, as written, sets forth a requirement for electronic TWIC inspection rather than specifically requiring that a TWIC be read by a TWIC reader, the text of this section needs some alterations to account for the new flexibility. We have integrated these alterations into the final regulatory text as detailed in the sections below. Furthermore, we have considered the requests and arguments of various commenters, and we are integrating many of the ideas presented into the final rule. Finally, we have attempted to modify and clarify the regulations where appropriate.

a. Lost, Stolen, or Damaged TWIC

The NPRM proposed that if an individual cannot present a TWIC because it has been lost, damaged, or stolen, the individual could be granted unescorted access for a period of up to seven days if various conditions were met. The conditions include the individual previously having been granted unescorted access, being known to have had a TWIC, being able to present alternative identification, and having reported the TWIC as lost, stolen, or damaged to the TSA. This proposed language was derived from existing requirements in 33 CFR parts 104 through 106. Additionally, in CG–FAC Policy Letter 12–04, the Coast Guard allowed an individual to be granted unescorted access for an additional 30 days (for a total of 37 days of unescorted access), if the individual provided proof that a replacement TWIC had been ordered. Policy Letter 12–04 also allowed unescorted access to those individuals with expired TWICs who had applied for a TWIC renewal prior to expiration.

i. Vessels and Facilities Using a PACS

Because the final rule provides more flexibility for electronic TWIC inspection beyond presenting a TWIC for access control purposes, some of the issues addressed in § 101.535 are significantly different if using a PACS to perform the electronic TWIC inspection. For example, if an employee's TWIC is stolen and the theft is reported to the TSA, the affected TWIC will be placed on the list of cancelled TWICs, but the employee will still be registered in the facility's PACS. However, upon attempting to gain access to a secure area, during the card validity check, the affected TWIC will appear on the list of cancelled TWICs, and thus fail the check. The revised final regulations are designed to allow a procedure where the employee can still be granted unescorted access until he or she can obtain a replacement TWIC and update his or her profile in the facility access control system with the information from the new TWIC. In this final rule, we have added § 101.550(b), which allows unescorted access to secure areas to be granted by a facility operator for a period of up to 30 days if the TWIC appears on the list of cancelled TWICs if the individual is known to have had a TWIC and to have reported it lost, damaged, or stolen.

Example: An individual who works at a facility where the PACS has been linked to a TWIC card reports his or her TWIC as lost. When presenting his or her facility access card to the PACS, the card validity check will return a TWIC on the list of cancelled TWICs because the TWIC has been reported lost. The FSO confirms that the TWIC was reported as lost. In that instance, the PACS will recognize the status of the TWIC as cancelled, but can still grant unescorted access to secure areas to the individual for a period of up to 30 days. If, after 30 days, the individual has not linked their facility access card to a valid TWIC, the PACS would have to deny unescorted access to secure areas to that individual.

ii. Vessels and Facilities Using TWIC Readers

We proposed in § 101.535 that vessel or facility operators using TWIC readers allow for temporary access in the case of a lost, stolen, or damaged TWIC. Specifically, the Coast Guard proposed that if a person is known to have had a TWIC, has previously been granted unescorted access, and can present another form of acceptable identification, and there are no other suspicious circumstances, then the operator may grant that person access for 30 days so that they can be issued a new TWIC.

We received a wide variety of comments relating to the issue of lost or stolen TWICs. One commenter argued that any allowance for malfunctioning TWICs undermines the point of having the card at all. We disagree, and note that the procedure is necessary to ensure smooth operation of the TWIC system, and believe it contains enough safeguards so as not to function as a loophole in security.

One commenter recommended splitting the CCL into separate categories, including categories of TWICs invalidated for "administrative reasons." We disagree, because the list of cancelled TWICs is intended to help screen out invalid cards regardless of the reason.

Many commenters argued that the 7-day period proposed in § 101.535(a) is too short, and that the period should be extended, with a significant number of these commenters referring to the 30-day extension of the 7-day period permitted by CG–FAC Policy Letter 12–04. Based upon the comments received, which indicated that it can take longer than 7 days to be issued a new TWIC, we have decided to include a 30-day period for this situation in section 101.550(b) of the final rule. We believe that this provides ample time to be issued a new TWIC, without presenting an undue security risk. When effective, this regulation will supersede the current guidance in CG–FAC Policy Letter 12–04, which allowed for a total of 37 days.

b. Transportation Worker Forgets To Bring TWIC To Work Site

The existing regulations in 33 CFR parts 104 through 106, the policy arrangements in CG–FAC Policy Letter 12–04, as well as the proposed regulations in § 101.535, only grant unescorted access to those individuals whose TWICs have expired or have reported their TWIC as lost, stolen, or damaged to the TSA. For all other individuals who fail to present a TWIC, unescorted access would be denied under proposed § 101.535(d). Thus, under the proposed regulation, an employee who forgot his or her TWIC at home would not be permitted unescorted access to the facility, whereas an employee whose TWIC was stolen would be permitted unescorted access for a limited period of time.

We received one comment relating to the issue of forgotten TWICs from a commenter who described such a situation in their submission to the docket for this rulemaking. This commenter suggested that we add an allowance for persons who forgot their TWIC at home. After reviewing comments on the proposed rule, we reiterate our existing position that persons who cannot present a valid TWIC, and have not reported their TWIC as lost, stolen, or damaged to the TSA, may not be granted unescorted access to a vessel or facility.

We believe that providing an exemption for forgotten TWICs creates a potential degradation in security and additional risks that outweigh the benefits. Unlike the situation where a TWIC has been reported as stolen or lost to the TSA and is therefore no longer valid which can be verified by checking the list of cancelled TWICs, a claim of a forgotten TWIC cannot be validated.

Instead, we reiterate that under current regulation at § 101.514(a), unless exempted from the TWIC requirements by § 101.514(b), (c), or (d), all persons must physically possess a TWIC, or undergo electronic TWIC inspection, prior to being granted unescorted access to a secure area of a vessel or facility. Persons who do not physically present a TWIC or undergo electronic TWIC inspection, and have not reported their TWIC as lost, stolen, or damaged to the TSA, may not be granted unescorted access.

c. Inaccessible Biometrics

In the NPRM, we proposed two secondary authentication procedures that could be followed in the event that a person's biometric template could not be read by a TWIC reader or PACS due to a technology malfunction or low quality biometric template. These alternatives were listed in proposed § 101.535(b), and allowed either the input of a PIN or the use of an alternative biometric that has been incorporated into the PACS. Given the change from requiring a TWIC reader to requiring electronic TWIC inspection, some changes to this section are needed as well. We discuss changes to this section and comments received below.

One commenter suggested that people with unreadable biometric templates should be allowed to use a PACS card in addition to a PIN or alternate biometric. We agree, and note that under the final regulations, given that input of biometric information (including alternatives to fingerprints) into a PACS reader may now be a common manner of completing identification verification, the use of a PACS card in conjunction with an alternative biometric will be an accepted regular way to conduct an electronic TWIC inspection.

However, upon consideration, we do not believe that the input of a PIN alone is equivalent to biometric identification. Biometric identification allows the facility to ascertain with a high degree of certainty whether the individual requesting access is the TWIC-holder. On the other hand, commenters noted that other methods of identification verification will not detect counterfeit, stolen, or borrowed TWICs. Similarly, the use of a PIN alone will not detect a borrowed TWIC or PACS card or, potentially, a stolen TWIC or PACS card, if the PIN has been illicitly obtained.

Nonetheless, the Coast Guard believes that a method for accommodating persons with unreadable biometrics is important. In such cases, we believe that visual TWIC inspection, when combined with the PIN, provides enough certainty as to be an acceptable alternative to biometric identification. Combining visual identification with the PIN will help to ensure that stolen and borrowed cards are difficult to use.

Thus, in this final rule, we are modifying the provision in proposed § 101.535(b), which allowed for PINs to be used in lieu of biometric matching, to include a requirement for visual identification in addition to the PIN. The new provision is located in § 101.550(c) of this final rule. We believe that this provision would present few problems, as people could use their TWICs for visual identification. Alternatively, if a PACS PIN is assigned and stored in the access control system, an employee with unreadable biometrics could enter his or her PIN and present a PACS card or driver's license to conduct a visual identification check.

d. Malfunctioning Access Control Systems

In the NPRM, we proposed a mechanism by which persons could be granted unescorted access to secure areas if a TWIC reader malfunctioned. Specifically, proposed § 101.535(c) allowed owners and operators to use visual checks for a period of 7 days if a TWIC reader malfunctioned. In light of the change in this final rule from the required use of TWIC readers to the more flexible requirement for electronic TWIC inspection for Risk Group A vessels and facilities, we are making some conforming changes and clarifications to this procedure. We received several comments on the matter, which are addressed below.

Upon consideration of this policy, we believe that a clause automatically allowing the use of visual TWIC inspections in lieu of biometric matching presents a serious security concern. As one commenter argued, any allowance for malfunctioning TWICs undermines the point of having the card at all. The Coast Guard agrees, and believes that allowing the use of visual TWIC inspections in lieu of biometric matching degrades security. This final rule represents a concerted effort to significantly upgrade the security at a relatively small group of high-risk vessels and facilities. Given the importance of security, we would not expect vessels or facilities to have only a single TWIC reader, but expect some redundancy in the system, and note that two commenters strongly echoed the view that redundancy is needed in any critical system. We would agree that, as a practical matter, the minimum number of electronic readers (either dedicated TWIC readers or those integrated into a PACS) at a facility or onboard a vessel would be two, in case one malfunctioned. As discussed in the RA, using the TWIC pilot data we estimated the average number of electronic readers required by this final rule by facility and vessel types at a minimum 2 per vessel and 4 per facility (Tables 4.3 and 4.4 of the RA). While the TWIC readers on the QTL have been tested to ensure a degree of reliability, there are many factors external to the testing process that could cause any one individual electronic reader to fail. The immediate availability of a backup electronic reader should one fail (as documented in the relevant security plan) would allow a vessel or facility to maintain the appropriate level of security for access control and continue operating without further burden. Due to the security concerns discussed in this paragraph, we are removing from the final rule the proposed provision in § 101.535 that would have permitted automatic transition to visual TWIC inspections in the event of an electronic reader malfunction. As stated above, based on discussions with industry we expect that owners and operators will have an additional functioning electronic reader to use in those instances in case of equipment failures or malfunctions (§§ 104.260(c) and 105.250(c)). If the owners and operators plan for malfunctions as existing regulations require, there should be no significant disruption of operations. Further, in the unlikely event that both primary and redundant electronic readers malfunction, the owner or operator could obtain permission from the Captain of the Port (COTP) to continue operating.

Two commenters suggested changing the language in proposed § 101.535(c) from a "reader malfunction" to "in the event of an access control system failure," noting that many other systems (such as the software or electricity) could fail, thus rendering an electronic reader inoperable. As we are deleting this exemption in this final rule, the language question is no longer at issue.

Commenters also suggested that 7 days is not sufficient to correct all problems that can result in a TWIC malfunction. They noted that it might take longer to procure parts, especially after a major regional disaster or holiday, and that a 15-day period where visual TWIC inspection is permitted would be more reasonable. On the other hand, one commenter suggested that it should take only hours to repair a malfunctioning TWIC reader. In this final rule, we are removing this provision. Thus, restoration of an access control system will be handled in accordance with the procedures for the reporting requirements for non-compliance in §§ 104.125, 105.125, and 106.125, which require the owner or operator to notify the cognizant Captain of the Port and either suspend operations or request and receive permission from the COTP to continue operating. Similarly, in the event of a total system collapse or regional disaster, the COTP will work with the affected organization to restore an access control system as expeditiously as possible.

The following examples provide illustrations relating to scenarios involving the failure of an access control system:

Example: A facility using TWIC readers at five access points suffers equipment failure of TWIC readers at two of those access points. The facility would still be able to permit unescorted access through the remaining three access points. Unescorted access could also be granted using portable TWIC readers at the two affected access points immediately in accordance with the FSP. The facility would be required to notify the COTP that this equipment failure took place but could continue operations using the remaining TWIC readers.

Example: A computer virus causes a facility's PACS to become completely inoperable, but the FSP contains an alternative where access is controlled through the use of portable TWIC readers, compliant with § 101.520, at each access point to secure areas. The facility would be required to notify the COTP that such a failure of the PACS had occurred, but could continue operations uninterrupted by using the portable TWIC readers.

Example: A computer virus causes a facility's PACS to become completely inoperable, and the FSP does not contain an alternative means of conducting electronic TWIC inspection. The owner or operator could request permission from the COTP to conduct visual TWIC inspections for a limited time until the PACS is operational. Grants of unescorted access to secure areas would have to be suspended until such permission was granted by the COTP.

Multiple commenters suggested that in the event that a TWIC reader malfunctions, a facility should be immediately able to continue to process workers using an alternative means defined in a security plan, rather than requesting approval from the COTP to do so. One commenter also suggested that an after-the-fact review by the Coast Guard could be used in such circumstances. We note that the proposed text of § 101.535(c) in the NPRM did not propose to require COTP authorization to allow continuing operation for a period of 7 days, so we are unsure of the provision to which the commenter may be referring. Nonetheless, the final regulatory text allows a facility to immediately continue to process workers using an alternative means as defined in an approved security plan as required by §§ 104.260(c) and 105.250(c) without additional COTP approval.

One commenter suggested that the Facility Security Officer (FSO) should be able to determine if there are mitigating circumstances that need to be implemented for a temporary time frame. In such a case, the commenter suggested that the facility would conduct visual identification verification in lieu of electronic TWIC inspection. We disagree with this suggestion, for the reasons described above. The commenter also requested that the COTP be able to waive TWIC requirements in certain circumstances. We note that the COTP has the power to waive requirements or impose alternative equivalent measures generally.

One commenter requested clarification on procedures to be used if TSA's Web site is inaccessible and they are unable to access updates to the CCL. In general, the owner or operator of an access control system is required to download the TSA-supplied list of cancelled TWICs (currently, the CCL) periodically, depending on the MARSEC level, pursuant to § 101.525 of this final rule. However, if the problem with downloading the list is out of the operator's control, such as the TSA Web site being down for an extended period of time, we would consider it acceptable to continue to operate the access control system by using the most recent version of the list available.

e. Requirements for Varying MARSEC Levels

In the NPRM, we proposed requirements for Risk Group A vessels and facilities that would vary based on the MARSEC level. MARSEC levels are set to reflect the prevailing threat environment of the maritime transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the United States. Specifically, we proposed to require that at MARSEC Level 1, during the card validation process, a TWIC must be checked against a version of the list of cancelled TWICs that is no more than 7 days old. However, at higher MARSEC levels, we proposed that the version of the list used to conduct the card validity check be no more than one day old. Several commenters responded to this issue, and offered remarks relating to the use of MARSEC levels overall.

One commenter agreed with the Coast Guard's proposal to require, at a minimum, weekly updates of the CCL at MARSEC Level 1 and daily updates of the CCL at higher MARSEC levels.

Another commenter stated that we did not adequately clarify how different MARSEC levels would interact with Risk Groups A, B, and C. In response, we note that vessels and facilities that were proposed to be classified as Risk Groups B or C are not affected by this final rule, and that MARSEC interacts with Risk Group A as described in § 101.525. We have moved the MARSEC level requirements to this separate section to improve clarity.

Several commenters suggested that electronic TWIC inspection should only consist of card validation and card authentication at MARSEC Level 1, and that the Coast Guard should provide the flexibility for them to use electronic TWIC inspection for biometric matching purposes at higher MARSEC levels, or require it only at those levels. Other commenters recommended that electronic TWIC inspection should only be required once per day at MARSEC Level 1, with additional measures, such as full electronic TWIC inspection or random spot checks, implemented only at higher MARSEC levels. One commenter recommended that electronic TWIC inspection be used only at higher MARSEC levels, with visual TWIC inspections performed the rest of the time. We disagree with these suggestions. We believe that Risk Group A vessels and facilities should be secured at all times, not just at rare moments of heightened alert, and that biometric identification, one of the TWIC's strongest security features, should be used regularly. Based on the experience with the pilot, we also believe that consistency in electronic TWIC inspection processes is important, as varying use of security features can create confusion that can hinder operations.

One commenter suggested that the CCL should be updated daily at all MARSEC levels, not just at MARSEC Levels 2 and 3. Similarly, one commenter stated that the CCL should be continually updated at all times. The commenter stated that once an automated method is established to do this, there is no additional cost associated with the increased frequency. While we do agree that, if automated, it is simple to update the list of cancelled TWICs, we note that not all operators use an automated system at this time. While we realize that some larger operations can set up automatic updates of the list, other operations may need to conduct such updates manually. In our RA, we calculated that it takes 30 minutes to update the CCL. For that reason, we have only required in 33 CFR 101.525 that the list of cancelled TWICs be updated daily during periods of heightened risk according to the specified MARSEC level. We note that the required periods to update the list are considered minimum requirements, but operators are free to update more often if desired.

One commenter asked if electronic TWIC inspection requirements should be applied to Risk Groups B and C at higher MARSEC levels. We do not believe it should. This would require those vessels and facilities to purchase and install equipment for electronic TWIC inspection for use during those periods of heightened alert, dramatically increasing the costs of the rule for what we believe is, at this time, comparatively little corresponding benefit. Furthermore, changing electronic TWIC inspection procedures at irregular and long-spaced intervals can cause confusion that could impair operations.

4. Recordkeeping Requirements

In the NPRM, the Coast Guard proposed specific recordkeeping requirements relating to the use of TWIC readers in vessels and facilities. These proposals, in proposed §§ 104.235(b)(9) and 105.225(b)(9), specified that owners or operators must keep records of each individual granted unescorted access to a secure area, which would include the FASC–N, date and time that unescorted access was granted, and the individual's name (if captured). The NPRM also proposed to require that owners or operators keep documentation demonstrating that they had updated the CCL with the required frequency. The NPRM proposed a 2-year minimum retention time for such records, and specified that TWIC reader and PACS readers were sensitive security information (SSI), protected under 49 CFR 1520. We received several comments on the subject of recordkeeping, which are discussed below.

Many commenters suggested that the 2-year recordkeeping requirement was too long. One commenter supported the 2-year recordkeeping requirement, although noted that a shorter period would not be objectionable if the 2-year requirement was deemed overly burdensome or unnecessary. Another commenter suggested the period was an issue of concern, and that the Coast Guard should provide the rationale behind the requirement to retain records for 2 years rather than any other amount of time. The same commenter added that the argument for consistency with other recordkeeping requirements did not justify the burden of a 2-year requirement, although the commenter did not suggest an alternative timeframe. One commenter recommended that the records be retained for only 30 days, noting that this would be less burdensome.

In this final rule, as explained in more detail below, we are maintaining the 2-year timeframe for record retention as we do not believe it is unduly burdensome or unnecessary. We also disagree with the commenter that consistency with all other MTSA-related records is an insufficient rationale for requiring records to be kept for a 2-year period. We believe that if differing records were required to be kept for varying amounts of time, it would needlessly complicate the storage of those records and potentially add additional expenses.

One commenter stated that the 2-year retention period presents opportunities for the information to be mishandled or misused, and thus should be shorter, although no specific timeframe was suggested. While we realize that storing data for any period of time can result in misuse or mishandling, we note that the information is protected as SSI, and thus is subject to comparatively strict usage and storage controls. We believe that the risk of misuse or mishandling of the information is far outweighed by the security value of collecting and storing the data for use in security investigations. The commenter also stated that a shorter window would provide law enforcement sufficient data to assist in security investigation, but no alternative window was suggested nor supporting information supplied. Without additional information, we are not deviating from the 2-year period proposed in the NPRM and used in all other MTSA-related recordkeeping requirements.

This commenter also stated that 46 U.S.C. 70105(e) implies that information gathered by a TWIC reader from a worker's card must not be shared with an employer or otherwise publicly released. We do not believe that this characterization is correct. 46 U.S.C. 70105(e)(1) reads as follows: "Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer." This restriction only applies to information obtained by the Attorney General or the Secretary, and includes information received by the Coast Guard. The information generated by electronic TWIC inspection is obtained by a private entity (the facility or vessel owner or operator) to whom the restriction in 46 U.S.C. 70105(e)(1) does not apply.

However, and as the commenter noted, some information collected by the TWIC reader or PACS is considered SSI, and is thus protected from unauthorized disclosure under 49 CFR part 1520. The commenter recommended that the Coast Guard consider all electronic reader records, whether of an individual or of an aggregated group, be restricted to security use only and explicitly forbidden to be used in labor-management issues (such as establishing hours worked or reporting criminal activity).

Not all electronic reader records qualify as SSI and thus some information concurrently collected during electronic TWIC inspection can appropriately be used by an owner/operator for non-security but still legitimate purposes without violating 49 CFR 1520. The preamble of the NPRM contains clear guidance regarding the treatment of certain information collected by electronic TWIC inspection. In that document, we clearly stated that "[w]e consider a TWIC-holder's name and FASC–N to be SSI under 49 CFR 15.5." We went on to explain that "to the extent that a PACS contains personal identity [including the FASC–N] and biometric information, it contains SSI, which must be protected in accordance with 49 CFR part 15."[37] However, an important aspect of this final rule is that it allows electronic TWIC inspection to be integrated with a facility's PACS, which serves many other purposes beyond security and contains non-SSI information. For example, PACSs are legitimately used to restrict access for non-security purposes (such as private or dangerous areas) and to help establish the hours worked by employees. Owners and operators of facilities have valid uses for the non-private information not covered in the SSI regulations but still collected by a PACS regarding the location of personnel on their property.

One commenter requested specific information regarding the requirements established for owners or operators to secure the privacy of individual cardholders. We note that we have not established any new requirements in this rule for such safeguarding because the SSI requirements are already sufficiently comprehensive. See 49 CFR part 15 for regulations covering restrictions on disclosure, persons with a need to know, marking, consequences of unauthorized disclosure, and proper destruction of SSI.

The Coast Guard weighed privacy and security concerns in the development of this requirement. To minimize the amount of personally-identifiable information transferred from the TWIC to the TWIC reader, TWIC readers are specifically designed to only collect the minimum amount of information necessary to assist in access control and maritime security. Owners and operators who collect and maintain protected data from electronic TWIC inspections cannot share this information outside of their vessel or facility. The only allowable sharing is back to the TSA or to the Coast Guard for auditing or law enforcement purposes, or to assist with customer redress.[38]

Owners and operators are also bound by the restrictions on disclosure of SSI.[39] Unauthorized disclosure of SSI is grounds for a civil penalty and other enforcement or corrective action by DHS, and appropriate personnel actions for Federal employees. Corrective action may include the issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure, or of an order to cease future unauthorized disclosure.

Two commenters suggested that SSI requirements should not apply to electronic TWIC inspection records if no personally-identifiable information is recorded (*i.e.*, only the FASC–N, date, and time of the transaction is recorded). We note that pursuant to 49 CFR 1520.5(b)(11)(i)(A), SSI includes identifying information of certain transportation security personnel, which includes "Lists of the names or other identifying information that identify persons as . . . having unescorted access to . . . a secure or restricted area of a maritime facility, port area, or vessel." This information is specifically addressed in the recordkeeping requirements of this final rule. For example, § 105.225(b)(9) states that the TWIC Reader or PACS system must capture the "FASC–N, date and time that unescorted access was granted; and, if captured, the individual's name." If such information was captured, it would be considered SSI.

Commenters also suggested additional information that could be collected during electronic TWIC inspection. One commenter suggested that an electronic TWIC reader transaction should also include an identifier for the specific electronic reader device, and if it is a portable electronic reader, an identifier for the operator of the device. The commenter suggested that this information would enhance the usefulness of an audit trail. While we see that there could be some value in having this information recorded, we believe that it would be overly complex to add this information into the suite of recorded information at this time, and the value of such information would not be worth the additional cost. We note that such information might be gathered from other sources even without a requirement to collect it in this final rule. Nonetheless, should we reconsider the scope of data collection for electronic TWIC inspection in future rulemakings, we will consider this suggestion.

Two commenters recommended that recordkeeping requirements should be extended to situations where an electronic TWIC inspection is not used, such as visual TWIC inspections, RUA, and escorted access. One commenter suggested that without recordkeeping requirements for visual TWIC inspection, there is no incentive—other than avoiding the consequences of being caught—to actually conduct visual TWIC inspections. We disagree with these comments. A recordkeeping requirement for visual TWIC inspections would mean that each owner or operator would need to record information on each TWIC inspection. We would need to demonstrate that the cost of such a requirement is justified before imposing it on the regulated population. In that regard, we note that in 2013, the Coast Guard conducted 12,171 inspections at MTSA-regulated facilities for compliance with the regulations in 33 CFR part 105. As part of those inspections, Coast Guard personnel spot-checked 52,708 TWICs, finding a validity rate of greater than 97 percent. In light of the high validity rate, we do not believe that a recordkeeping requirement for visual TWIC inspections is appropriate or necessary.

One commenter also suggested that there should be recordkeeping requirements for when a person is granted unescorted access through the "special circumstances," described in § 101.550 of the final rule, such as if he or she had reported their TWIC as lost or stolen. In the NPRM, we did not propose any requirements that records be kept for transactions that do not make use of electronic TWIC inspection. While such a suggestion is outside the scope of this final rule, we will consider it in future regulatory actions.

Furthermore, we are not creating new requirements for visual inspections in this final rule, including any recordkeeping requirements. This final rule pertains to requirements for electronic TWIC inspection. Requirements pertaining to other means of access, including access granted through visual TWIC inspection or escorted access to a secure area, are outside the scope of the final rule. We do note that electronic TWIC inspection is a prerequisite for RUA, and thus a record is created when that transaction occurs. However, due to the nature of RUA, no additional records are kept outside of the electronic TWIC inspection transactions. Such recordkeeping would be burdensome and defeat the purpose of RUA.

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[37] 78 FR 17806–7.

[38] *See* 49 CFR part 1520.

[39] *See* 49 CFR 15.9(a)(1).

One commenter suggested that the lack of criteria or specificity as to what the required records should contain severely limits their efficacy. We believe that the NPRM was clear on what records are required to be kept, but we will discuss them here in greater length. Specifically, a record should be kept of each instance in which a person is granted unescorted access to a secure area. This record must contain the FASC–N of the TWIC issued to the person granted unescorted access. If the TWIC reader or PACS captures the individual's name, the name associated with the TWIC must also be part of the record. Finally, the record must include the date and time the person was granted unescorted access (the time can be rounded to the nearest minute; it is not required that the precise second that access was granted be captured, although it is acceptable to be more precise). As noted in the NPRM, "we allow individual regulated parties to determine the best method and manner of complying with the recordkeeping requirements."[40]

The commenter also requested additional justification for the 2-year period, stating that neither the argument for consistency nor the argument for law enforcement justify the length of time to hold records. As stated in the NPRM, the timeframe was designed, in part, for consistency with existing security-related and other recordkeeping requirements applicable to vessels and facilities, and we note that all other security recordkeeping requirements in the affected sections are subject to a 2-year retention period. In response to the commenters who requested additional justification, we would add that investigations of TSIs can involve analysis of data that stretches back for that amount of time, and we want to ensure that any historical data that could be useful is available. We believe that a 2-year period is an appropriate amount of time to ask owner operators to store data to ensure that no investigation is limited due to the unavailability of relevant data. We continue to believe that a uniform timeframe for recordkeeping requirements, when practicable, provides the most efficient regulatory system, and that the costs of storing data are minor compared to the security benefits provided.

The commenter also referred to the 2013 GAO report, noting its concern that the TWIC Pilot Program had difficulties collecting accurate, consistent data from the pilot sites.[41] While we are aware of the GAO's criticisms of the TWIC Pilot Program, we do not believe those data collection concerns are relevant to the data collection proposed by the implemented electronic TWIC inspection regulations. Beyond the fact that both involved data collections, the nature and uses of the data collected in the two programs are very dissimilar. For example, among many other items that related to the overall operation of the facilities at issue, the Pilot Program collected data on the number of people using TWIC readers, the amount of time taken per transaction, and the failure rates for transactions. These are very different data than collected by electronic TWIC inspection, which collects items such as the FASC–N. The data collected by electronic TWIC inspection is narrowly tailored to assist the Coast Guard and other law enforcement agencies in investigating TSIs, and the criticisms of data collection on the Pilot Report are not analogous.

One commenter stated that the recordkeeping requirements proposed in the NPRM would create a large amount of data and may need to be stored in a media that is not immediately accessible. The commenter requested that the final rule allow a reasonable amount of time to retrieve and produce the electronic records when requested. We agree with the commenter that a reasonable amount of time will be permitted to produce any requested records. This final rule deals only with recordkeeping requirements; it does not specify a timeframe for record retrieval.

One commenter requested clarification of a specific situation: a Port Authority operates a cruise terminal which uses an FSP, but when a cruise ship is in port, the cruise security line operates under its own FSP. The commenter asked who would be responsible for maintaining the records. Based on the information described in this situation, the owner or operator of the TWIC reader or PACS system conducting the electronic TWIC inspection would be responsible for maintaining the required records of those transactions. However, we note that recordkeeping requirements for any particular facility would be described in the FSP and that different situations may yield different results, but that these issues would be resolved during approval of the FSP.

Similarly, another commenter described a scenario where a private security company and a public entity share a facility. The commenter asked if the entities would need to share records. In response, we note that there is no requirement to share records, and that the owner or operator of the TWIC reader or PACS conducting the electronic TWIC inspections is the entity required to keep the records. Which entity is responsible for recordkeeping should also be addressed in the FSPs.

One commenter requested that, if a non-Risk Group A facility were to use electronic TWIC inspection on a voluntary basis, they should not be subject to the electronic recordkeeping requirements in proposed § 105.225(b)(9) and (c). Assuming that a facility is using electronic TWIC inspection on a voluntary basis to replace visual TWIC inspection, pursuant to the guidance in PAC 01–11, we disagree. If replacing security personnel with electronic TWIC inspection, then all elements of such an inspection, including recordkeeping requirements, would have to be met. Maintaining the electronic records as required provides additional security and information in case of a security breach in the future. Visual inspection programs are not required to maintain this type of information due to the large amount of time needed to manually enter the same information.

C. When To Conduct Electronic TWIC Inspection

One of the areas in which the Coast Guard received the most comments on the proposed rule was the issue of when a TWIC must be read. Specifically, the NPRM used language that stated, "prior to each entry, all persons seeking unescorted access to secure areas [must] present their [TWIC] for inspection before being granted such unescorted access" (this language was used in proposed §§ 101.520(a)(1), 101.525 introductory text, and 101.530 introductory text).

Many commenters asked for clarification regarding this language, specifically relating to issues of where TWIC readers should be located, and to what specifically "prior to each entry" referred. Despite using identical language in the proposed regulatory text, the requirement for when to perform electronic TWIC inspection is very different for vessels than it is for facilities. With regard to vessels, we stated in the NPRM that "for vessels, this NPRM proposes to require TWIC readers at the access points to the vessel itself, regardless of whether the secure area encompasses the entire vessel."[42] On the other hand, with regard to facilities, we stated that "this NPRM proposes to require TWIC readers at the access points to each secure area,"[43] which could necessitate a large number of TWIC readers in facilities like passenger facilities, many of which have multiple access points to secure areas within the facility. Similarly, the NPRM RA reflected this information, estimating that each facility might use a number of TWIC readers (passenger facilities, with many access points to secure areas, were estimated to require an average of 16 TWIC readers each), whereas each vessel might only be equipped with one or two, reflecting the fact that they would only be deployed at the entrances to the vessels, not at each access point to a secure area within the vessel.

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[40] 78 FR 17806.

[41] "Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed" (GAO–13–198) is available in the docket by following the instructions in the **ADDRESSES** section of this preamble.

Nonetheless, we recognize the confusion brought on by the proposed language. One commenter, for example, requested a clarification of the reference to "each entry" to a facility or vessel secure area. The commenter noted that passenger vessels and facilities included restricted areas, employee access areas, and passenger areas, and it was unclear from the NPRM where the electronic TWIC inspection requirements would be applied. In this final rule, we have used language that we believe more clearly describes the specific requirements of the rule. We broke the language down into two separate paragraphs, one for vessels (*see* § 101.535(a)), and one for facilities (*see* § 101.535(b)), using slightly different language for each. The final regulatory text for facilities now states, "Prior to each entry *into a secure area of the facility,*" while the final regulatory text for vessels now states, "Prior to each *boarding of the vessel.*" While the language is slightly modified, we believe it more clearly implements the proposed requirements in the NPRM.

1. Secure, Restricted, Public Access, Passenger Access, and Employee Access Areas

In terms of clarifying that an electronic TWIC inspection must be performed prior to each entry into a secure area (for facilities), we believe that it is important to clarify the term "secure area," as well as explain the differences between secure areas and other types of areas on MTSA-regulated vessels and facilities. Many commenters asked questions that indicated the difference between secure areas, restricted areas, employee access areas, public access areas, and passenger access areas was not entirely clear. In this section, we discuss the definitions of these types of areas, given their definitions in 33 CFR part 101, as well as the additional explanation offered in NVIC 03–07 and other documents.

The statutory requirement for TWIC readers, stated in 46 U.S.C. 70105(a)(1), requires that anyone granted unescorted access to a secure area of a vessel or facility maintain a valid TWIC. Secure areas are defined in 33 CFR 101.105. The relevant portion of the definition states that "*Secure area* means the area on board a vessel or at a facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas."

The concept of a secure area is explained in more detail in NVIC 03–07, enclosure (3). Section 3.3b of that document explains that "for facilities, the secure area is the entire area within the outer-most access control perimeter of the facility, with the exception of public access areas, and encompasses all restricted areas." Similarly, "for vessels and OCS facilities, the secure area encompasses the entirety of a vessel or OCS facility, with the exception of passenger or employee access areas for vessels."

Existing regulations distinguish between the secure area and areas designated as "restricted." The term restricted area, as defined in existing 33 CFR 101.105, means "the infrastructures or locations identified in an area, vessel, or facility security assessment or by the operator that require limited access and a higher degree of security protection [than secure areas]."

NVIC 03–07 also goes into detail explaining the difference between secure and restricted areas, noting that by virtue of the fact that the secure area encompasses the entire facility or vessel (with the exclusion of public, passenger, and employee-access areas), restricted areas fall within this perimeter.

Multiple commenters with facilities expressed concerns about the existence of multiple secure areas within any one facility, and what access control measures would be required by this final rule. Other commenters represented both vessels and facilities, but had similar concerns with regard to the differences among secure, restricted, and public access areas. The definitions of secure and restricted areas have implications when determining where to locate electronic TWIC inspection locations on various facilities. These locations would be marked in an FSP or a VSP. Given the requirement that electronic TWIC inspection be conducted "prior to each entry" into a secure area (for facilities), we would anticipate that the inspection points at facilities would be located at the access points to secure areas. For example, in a chemical cargo facility the entire facility may be considered a secure area, as security measures for access control may surround the entire facility. Such a facility would likely only conduct electronic TWIC inspection at the entrance to the facility. Alternatively, a facility might categorize the parking lot as a "public access area" so that employees and visitors can park, and electronic TWIC inspection could be conducted at the access point from the parking lot into the secure area of the facility. We note that a second round of electronic TWIC inspection is not required when passing from a secure area to a restricted area, although we would anticipate other security measures to be in place.

For passenger facilities, the majority of the areas may be designated "public access areas," "passenger access areas," or "employee access areas" (such as break rooms). In such an instance, electronic TWIC inspection points may only be located at entrances to secure areas such as the pier or FSO's office. The Coast Guard acknowledges the confusion surrounding this issue, which is why we have included a clarifying revision to 33 CFR 103.505, Elements of the Area Maritime Security (AMS) Plan, in which a parenthetical reference to the TWIC program may create confusion regarding whether TWIC provides access control for secure or restricted areas. This final rule creates electronic TWIC inspection requirements for access to secure areas, and does not address requirements for access control to restricted areas.

Finally, we note the concerns commenters had relating to secure areas on water. One commenter noted that the water where barge fleets are located is considered a secure area, but the area was only accessible by boat. The commenter questioned how electronic TWIC inspection could be conducted in such a situation. Similarly, another commenter requested that they be allowed to conduct electronic TWIC inspections on shore before entering barge fleeting areas, as otherwise there would be no way to conduct an electronic TWIC inspection. Another commenter noted that the only "access point" into such secure areas may be a towing vessel with the dedicated purpose of guarding the area.

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[42] 78 FR 17803.

[43] 78 FR 17803.

These commenters raise important issues as to how we would apply the electronic TWIC inspection process to secure areas on water, such as barge fleeting facilities. Upon consideration, we do not believe that requiring electronic TWIC inspection prior to entering such areas would be practical, as there is no particular access point to such an area that can be controlled by a TWIC reader. Electronic TWIC inspection would instead be required at the barge fleeting facility's shore side location.

Many commenters representing vessels were concerned about a situation involving a passenger vessel (potentially in Risk Groups B or C) with multiple secure areas and no one standing watch at the entrances to each secure area. We note that while the electronic TWIC inspection requirements are different for vessels than for facilities, the definitions of secure areas and restricted areas are similar. On non-passenger vessels, generally the entire vessel is considered a secure area. Certain areas within the vessel may have higher levels of security, and those would be considered restricted, which again are not impacted by this final rule. On passenger vessels, while security measures would still encompass the vessel, only certain areas would be considered secure, as passenger access areas and employee access areas are excluded from the definition of secure areas. As described below in Section V.C.2 of this preamble, because electronic TWIC inspection on vessels is only conducted when boarding the vessel, the exact location of secure and restricted areas on a vessel would not affect the placement of electronic TWIC inspection points.

a. "Prior to Each Entry" for Risk Group A Facilities

In this final rule, we are finalizing without change the proposed requirement that electronic TWIC inspection is required prior to each entry into a secure area of a Risk Group A facility. Similarly, we are finalizing the proposed requirement that electronic TWIC inspection is required prior to each entry onto a Risk Group A vessel. While some commenters objected to this policy, we believe that it represents the best balance of security and practicability at this time. Furthermore, we believe that many objections to the policy expressed by industry are addressed by clarifying that the new requirements apply only to Risk Group A vessels and facilities, and that vessels and facilities not in this group have no new requirements in this final rule. In this section, we address comments specifically related to Risk Group A facilities. Questions for Risk Groups B and C, as well as questions for vessels, are discussed in other sections of this preamble.

Several commenters requested guidance related to operations conducted under PAC 08–09, change 1. That document allows owners and operators of a vessel or facility to use a local access card to grant unescorted access to secure areas, assuming that the local access card is tied to a valid TWIC and that verification (visual or electronic) of the local access card is conducted each time access is granted to a secure area. Pursuant to PAC 08–09, TWICs needed only to be validated once every 24 hours. However, PAC 08–09 is only valid until the Coast Guard publishes a final rule requiring the use of TWIC readers as an access control measure.[44] Because this final rule establishes electronic TWIC inspection as a requirement for Risk Group A facilities, the guidance in PAC 08–09 will no longer be valid with respect to those facilities upon the effective date of this rule. Because there are no electronic TWIC inspection requirements for Risk Groups B and C, PAC 08–09 remains in force for those facilities. We intend to update PAC 08–09 before the effective date of this final rule.

We note that while PAC 08–09 will no longer be valid for Risk Group A facilities, the flexible performance requirements of this final rule will continue to allow access using local access or PACS cards, assuming the PACS is able to perform the electronic TWIC inspection requirements of biometric identification, the card validity check, and card authentication. While many commenters requested that Risk Group A facilities be permitted to continue to follow the guidance in PAC 08–09 (some of whom suggested that it could be augmented by a daily card validity check), we are not granting that request. Electronic TWIC inspection is a more secure system than that used under PAC 08–09 for a variety of reasons, but most distinctly because it performs a biometric identification each time a person is granted unescorted access to a secure area, whereas the system described in the PAC 08–09 does not. Biometric identification provides a higher level of certainty that an individual is an approved TWIC-holder than visual identification.

One commenter suggested that the purpose of TWIC is for a worker to be vetted, and that TWIC should not be used as an access control system, noting that it is up to the owner of the secure space to determine which TWIC-holders are granted unescorted access. While we agree that one of the benefits of TWIC is that it ensures an individual has undergone a background check, we disagree that vetting is the only purpose of a TWIC. Congress mandated that the TWIC contain the biometric identification of the TWIC-holder. Furthermore, Congress explicitly required that the Coast Guard ensure that only individuals who hold a TWIC be granted unescorted access to secure areas of MTSA-regulated facilities in 46 U.S.C. 70105(a)(1). We conclude, therefore, that it is the clear mandate of Congress for this biometric identification to be used to ensure that only TWIC-holders are granted unescorted access to secure areas of Risk Group A vessels and facilities. Using this function of the TWIC for identification verification purposes will enhance the security afforded by the TWIC program in the highest-risk areas.

Other commenters expressed the opposite view, arguing that the Coast Guard was wrong to limit the requirement of electronic TWIC inspection to Risk Group A vessels and facilities only. Multiple commenters suggested that the proposal to limit the use of electronic TWIC inspection to Risk Group A vessels and facilities deviated from Congress' intent in developing the TWIC program, and that to conform to the intent of Congress, we should have extended the mandate to perform electronic TWIC inspection to Risk Group B as well. Other commenters noted that in the "findings" section of the MTSA statute (Pub. L. 107–251, 101(11)), Congress found that "[b]iometric identification procedures for individuals having access to secure areas in port facilities are important tools to deter and prevent port cargo crimes, smuggling, and terrorist actions." The commenter argued that to be responsive to Congress, TWIC cards should not be used primarily as a "flash pass," but should be used more often as biometric identification tools.

The Coast Guard believes that the requirement instituted in this final rule represents a reasoned implementation of electronic TWIC inspection. As analyzed in the NPRM and associated preliminary RA, we believe the vessels and facilities in Risk Group A are at much greater risk than other MTSA-regulated vessels and facilities.

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[44] PAC 08–09, change 1, p. 2.

Electronic TWIC inspection has a high utility in deterring and mitigating certain threats to these targets. Given the costs in infrastructure and operational needs associated with electronic TWIC inspection, as shown in the TWIC Pilot Program and in the Coast Guard's regulatory analyses, we do not believe that electronic TWIC inspection should be extended to other vessels or facilities at this time. Information and experience gained through the implementation of Risk Group A vessels and facilities will, however, help to determine whether and how the electronic TWIC inspection program should be expanded in the future.

Several commenters argued that the requirement to undergo electronic TWIC inspection prior to each entry into a secure area of facility was overly burdensome and unnecessary. One commenter stated that the Coast Guard does not understand the day-to-day operations of passenger vessels and facilities, and that only small areas are secure and restricted, requiring a TWIC-holder to move in and out of these areas multiple times per day. We disagree with this statement, and note that the NPRM and the NPRM RA repeatedly affirmed that a TWIC reader would be required at each access point to a secure area in a Risk Group A facility. We acknowledge that in cases where employees of a passenger facility move repeatedly from a non-secure area (such as a passenger access area) to a secure area, they will likely have to undergo repeated electronic TWIC inspections. We also note that these facilities already use access control measures to prevent unauthorized persons, including vessel passengers, from entering secure areas, and that this requirement only involves incorporating electronic TWIC inspection into those existing access control measures.

Other commenters also made suggestions that would allow for reduced numbers of electronic TWIC inspections for employees that enter and leave secure areas multiple times per day. Several commenters suggested that checking TWICs against the CCL multiple times per day is redundant, as the list is only updated, at most, once per day. These commenters suggested that at lower MARSEC levels, one electronic TWIC inspection per day would be enough, and then a visual TWIC inspection could be used for each subsequent entry into a secure area. We note that electronic TWIC inspection performs much more than just the card validity check, and that there is a need to check that the individual presenting the card is the correct individual presenting an authentic card each time he or she is granted unescorted access to a secure area. For these reasons, a single electronic TWIC inspection should not allow repeated grants of unescorted access to secure areas in Risk Group A facilities.

One commenter argued that its security needs would be better met through cross-checking TWICs via its employment, human resources, and internal security systems, and then issuing badges that it has control over. The commenter stated that in that situation, it would have the ability to verify and revoke access as necessary for the security of the facility. With the new flexibility for electronic TWIC inspection in this final rule, such cross-checking using facility-specific identification cards linked to a PACS is possible, as long as the facility's PACS performs the biometric identification, card validity check, and card authentication procedures required in this final rule prior to each entry into a secure area.

One commenter stated that the "prior to each entry" requirement is impracticable for cruise ship terminals. This commenter stated that dozens of porters, stevedores, and shore staff constantly move baggage in and out of secure areas using mechanical equipment such as forklifts and hand trucks, and that requiring electronic TWIC inspection at each entry would be potentially unsafe. We realize that there is a need to balance the requirement to ensure that only TWIC-holders are granted unescorted access to secure areas with the operational needs of a facility. In a situation such as that described by the commenter, an RUA plan could alleviate the burden of repeated and constant electronic TWIC inspections. The RUA option was designed primarily to address the needs of baggage handlers and stevedores, and was developed to facilitate operations such as those described by the commenter where persons must enter and exit a secure area on a continual basis. RUA is described in more detail in Section V.C of this preamble.

Several commenters were concerned that the proposed requirement for permanently placed TWIC readers at the access points for Risk Group A facilities offered no flexibility, and could restrict the use of portable TWIC readers as an option at less heavily-trafficked access points. We first note that the NPRM did not specifically require a fixed TWIC reader at all access points, but we assumed that many facilities would use fixed TWIC readers over portable ones at fixed access points for the purposes of analysis. However, we agree with the commenter that the NPRM did not offer enough flexibility, and thus this final rule adds another option for electronic TWIC inspection. Facilities will be able to use fixed electronic readers, portable electronic readers, or a PACS to conduct electronic TWIC inspection, depending on which works best considering their business operations.

One commenter raised a concern that a requirement to present a TWIC prior to each entry into a secure area would mean that TWIC-holders would have to carry their cards at all times, thus exposing cards to being damaged in a harsh environment or lost. The commenter recommended that a system be utilized that would allow them to keep their workers' TWICs in a safe and secure location where, upon request, the TWICs could be retrieved and inspected within a reasonable amount of time. We agree that this could be appropriate in many maritime environments, and thus the flexibility allowed by this final rule would permit such a system. A facility could control access to secure areas using a PACS to conduct the electronic TWIC inspection, thus allowing the TWICs themselves to be maintained in a safe, nearby location, where they could be inspected if necessary.

One commenter requested clarification with regard to overall personnel accountability within secured areas. Specifically, the commenter asked if the Coast Guard would require TWIC-holders to record when they exited a secure area, and if a facility should know who is in a secured area, at all times. In this rulemaking, we did not propose to require personnel accountability in this fashion, nor does the final rule require TWIC-holders to record when they exit a secured area. Another commenter expressed support for not proposing such a requirement in the NPRM. The final rule only requires electronic TWC inspection upon entering a secure area of a Risk Group A facility. With regard to recordkeeping, as discussed above, this final rule only requires that records be kept of individuals that enter the secure area, and of when they entered. This final rule does not require that records be kept of individuals leaving a secure area, nor does it require that records be kept of who is in a secure area at any particular time.

b. Recurring Unescorted Access

Many commenters requested that the Coast Guard reinstate the concept of RUA that had originally been considered in the ANPRM, but was not proposed in the NPRM. As described in the ANPRM, as part of an RUA plan, the owner or operator of a vessel or facility would conduct an initial biometric match of the individual against his or her TWIC, either at hiring or upon the effective date of a final rule, whichever occurs later. This biometric match would include a verification of the authenticity and validity of the TWIC. Once this check is done, the TWIC would only be used as a visual identity badge, at a frequency to be approved by the Coast Guard in the amended security plan, so long as the validity of the TWIC is verified periodically, ranging from monthly to daily, depending upon Risk Group and MARSEC Level.[45] RUA, as described in the ANPRM, would be limited to 14 TWIC-holders per vessel or facility, although it was not clear whether that meant an RUA regime would only be approved if the vessel or facility crew were limited to 14 TWIC-holders, or if 14 people per vessel or facility would be exempted from electronic TWIC inspection procedures that would still be in place for other employees or persons seeking access.

The Coast Guard opted not to include RUA in the proposed regulatory text in the NPRM, despite the fact that many ANPRM commenters supported various versions of RUA procedures. In the NPRM, we explained that "RUA was previously proposed [in the ANPRM] to introduce flexibility and provide relief to vessels otherwise required to use TWIC readers, based on the familiarity that exists between a relatively small number of crewmembers." [46] However, by limiting electronic TWIC inspection requirements to Risk Group A vessels only, and including the vessel crewmember exemption in the TWIC applicability section, we believed we had rendered the need for RUA as a mechanism for regulatory relief unnecessary. One commenter requested clarification about whether the proposed RUA mechanism would apply to facilities as well, or just vessels. While the NPRM did not explicitly discuss the use of RUA for facilities, we did not consider such plans viable. Unlike vessels, facilities regularly receive unfamiliar personnel, such as visitors, contractors, and deliveries, and must have a means to ensure those visitors are valid TWIC-holders, regardless of the size of the regular staff.

We received several comments in response to the decision in the NPRM not to include an RUA provision. Most commenters recommended that some sort of RUA provision be included in the final rule, although they differed in their interpretations of what, exactly, an RUA plan would entail. Furthermore, multiple commenters laid out specific examples of how RUA could improve operations in several scenarios. These comments are described below.

One commenter suggested that an RUA plan for vessel and facility operations, including operations at facilities that service passenger vessels, would require that a TWIC-holder undergo electronic TWIC inspection once when he or she reports for work each day. It was unclear from these comments specifically how this plan would be implemented. If RUA were limited to certain crewmembers or employees, it is unclear how those crewmembers would differentiate themselves from other TWIC-holders who would still be required to undergo electronic TWIC inspection prior to each entry into the vessel or into a secure area of the facility. Furthermore, unless all crewmembers or employees were subject to the RUA plan, it is unclear how such a system would reduce costs, as access control measures would still need to be in place that would need to differentiate between TWIC-holders and non-TWIC-holders, but also differentiate between those TWIC-holders granted RUA and those subject to repeated electronic TWIC inspection. These questions, along with the exemption from electronic TWIC inspection requirements for vessels with low numbers of crewmembers, are the reason that the RUA plan was not proposed in the NPRM, despite being raised in the ANPRM, and we still do not have clear answers to these issues.

Several commenters raised the issue of RUA with regard to certain port workers who repeatedly enter and leave secure areas, such as baggage porters at cruise terminals or workers such as stevedores transferring cargo into a secure area. Similarly, one commenter expressed concern about how porters would be able to do their jobs if required to conduct electronic TWIC inspection at each entry into the baggage area. Some commenters suggested that in order to permit workers to efficiently perform their jobs, which may entail entering and leaving a secure area several times an hour, biometric checks should be limited to the beginning of a shift and after extended breaks. The commenter stated that it is not operationally practical to have these workers undergo electronic TWIC inspection repeatedly.

We agree that, for narrow classes of vessel or facility employees such as baggage porters, the electronic TWIC inspection requirements could prove particularly burdensome, and that these workers could be accommodated using a limited form of RUA as suggested by the commenter. Some scenarios where this may prove useful include, for example, porters who carry baggage from a curbside check-in area (unsecure) to a baggage storage area (secure) for cruise customers, or forklift operators who transport packages from a loading area (unsecure) to a secure storage area on a vessel or facility. These persons need to travel back and forth across the secure-unsecure boundary repeatedly, and repeated electronic TWIC inspections can be both cumbersome and redundant in these situations.

Therefore, to accommodate these situations without compromising security, we have added a limited form of RUA into this rule as § 101.555. The system would operate as follows: a vessel or facility would designate an area as a "Designated Recurring Access Area (DRAA)" in its security plan. As shown in Figures 1 and 2, the DRAA would consist of adjoining secure and unsecure areas, as well as the access gates between them. As long as a TWIC-holder stayed inside the designated area, he or she could pass between the unsecure and secure portions of the DRAA without having to undergo an electronic TWIC inspection each time he or she entered the secure portion.

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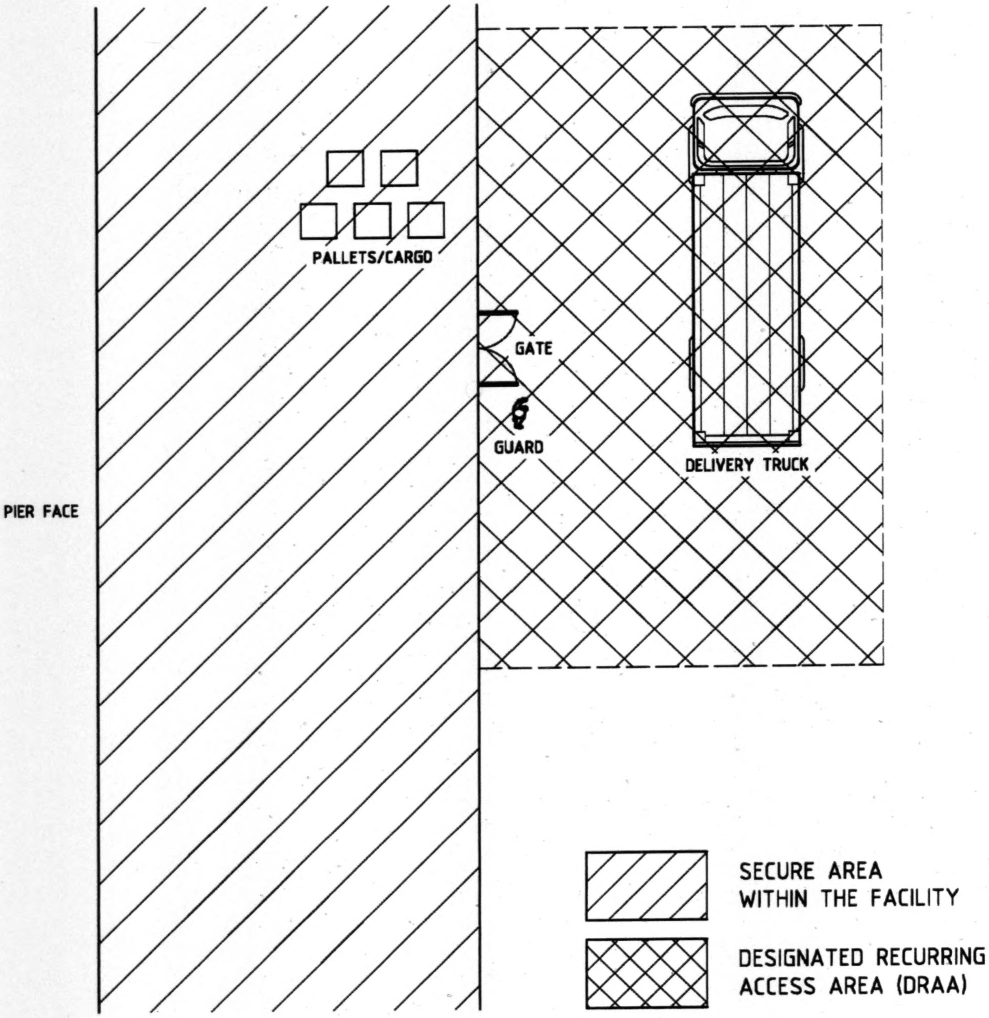
[45] *See* 74 FR 13362.

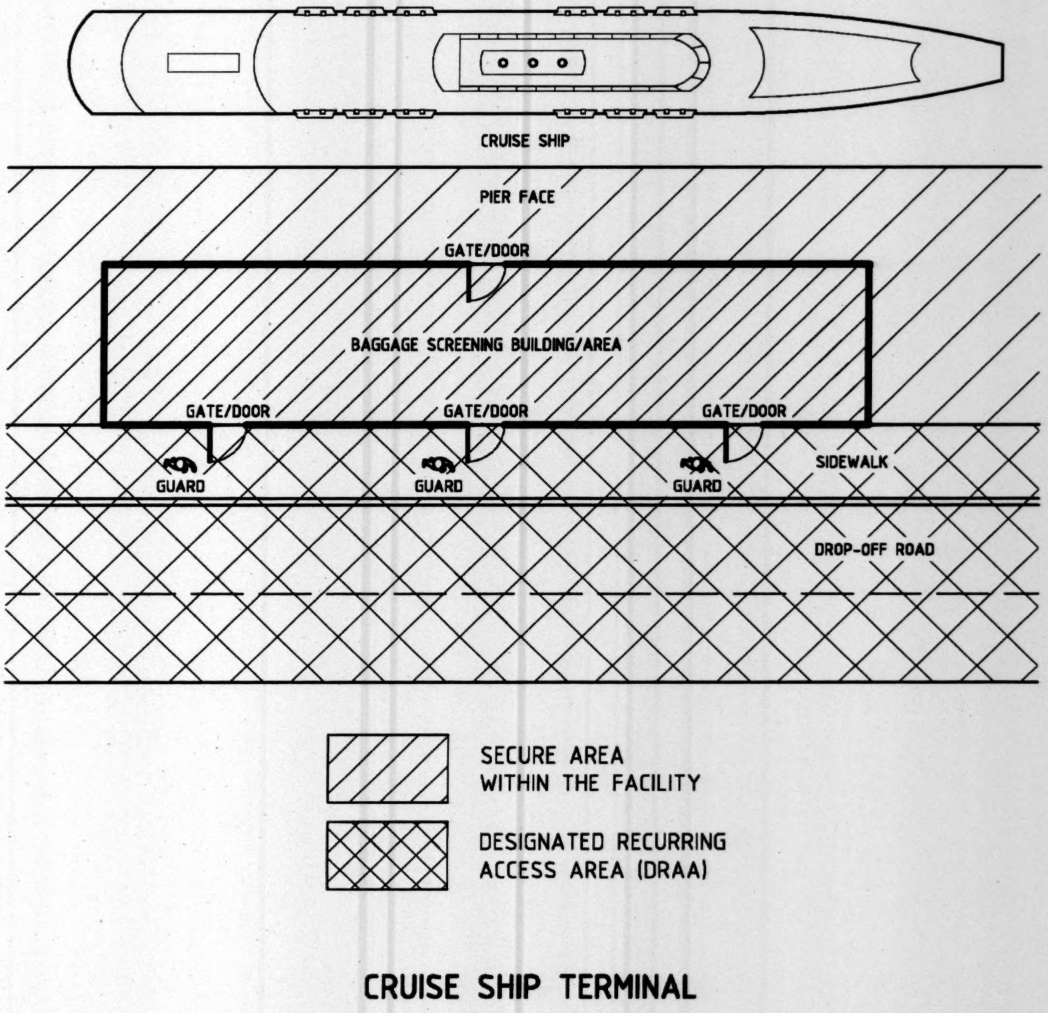
[46] *See* 78 FR 17804.

Figure 1: Designated Recurring Access Area (DRAA): Facility


PALLETS/CARGO
GATE
GUARD
DELIVERY TRUCK
PIER FACE
SECURE AREA WITHIN THE FACILITY
DESIGNATED RECURRING ACCESS AREA (DRAA)

DELIVERY TRUCK ACCESS

Figure 2: Designated Recurring Access Area (DRAA): Vessel



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We have considered the problem of differentiating between those persons granted recurring access and those who must undergo electronic TWIC inspection prior to each entry. Certain restrictions and conditions would be applied to ensure that no unauthorized persons gain access to the secure area through the DRAA. In order to allow recurring access, the Coast Guard is requiring that security personnel be present at the access points to the secure areas where recurring access is used. Although electronic devices, such as TWIC readers or a PACS reader, can be used to control access at other entrances, in an RUA situation the TWIC (or a linked PACS card) is not presented at each entry to the secure area. Instead, the presence of security personnel is necessary to properly control access while allowing the known DRAA participants to pass through repeatedly.

An additional requirement for a DRAA is that the entire unsecured area must be visible at all times to the on-site security personnel. This requirement is necessary to ensure that all recurring access participants have undergone the necessary electronic TWIC inspection before entering a secure area. We believe that without this requirement, it might be possible for a non-TWIC-holder to "talk their way" into a secure area by claiming they had already undergone a TWIC inspection, and had merely returned from an authorized break. We note that among various GAO criticisms of the maritime security program, this was one of the means by which GAO investigators were able to bypass security measures. We agree with one commenter that suggested electronic TWIC inspection should be repeated once returning from a break. By requiring recurring access participants to stay within sight of the security personnel or undergo a new electronic TWIC inspection, we can ensure that these types of incidents do not happen.

To gain recurring access, a TWIC-holder would need to undergo electronic TWIC inspection, including biometric matching, the first time the TWIC-holder entered the secure portion of a DRAA. This would of course happen at the beginning of a work shift, but would also happen after each time the TWIC-holder left the DRAA for any reason, including administrative reasons, lunch breaks, or even to use the restroom. We have also added a provision that requires at least one electronic TWIC inspection per change of security personnel in order to account for shift changes.

We have attempted to make the RUA policy as flexible as possible while still maintaining security. We note that the use of a DRAA is a wholly voluntary option, and that access to secure areas of a vessel or facility may always be accomplished through the procedures in §§ 101.535 and 101.550. Even within a DRAA, only access points that are used for recurring access must be manned by security personnel, so there can be other access points controlled by unmanned means (such as a lock connected to a TWIC reader) for employees who do not need recurring access. Furthermore, an area can be designated a DRAA at certain times. For example, at a cruise ship terminal, a curbside area could be designated a DRAA only during boarding times. This would allow the access points to be secured by unmanned means during other periods when recurring access is not necessary.

We also note that a DRAA may be incorporated in a Joint Vessel and Facility Security Plan, allowing an area where employees can cross from a pier to a vessel repeatedly without having to undergo electronic TWIC inspection each time. This can facilitate the loading or unloading of vessels considered secure areas.

2. Risk Group A Vessels

We received fewer comments regarding the requirements for electronic TWIC inspection for Risk Group A vessels than for vessels in other Risk Groups. In the NPRM, we discussed the TWIC reader requirements as applied to the Risk Group A vessel population in Section IV.L, “Physical Placement of TWIC Readers.” In that section, we stated that “[w]e propose to amend 33 CFR 104.265(a)(4) by requiring a vessel owner or operator to place TWIC readers at the vessel's access points only, regardless of whether the secure area encompasses the entire vessel.”[47] We realize that this sentence may have been confusing, as the only proposed modification to § 104.265(a)(4) was to add the sentence “Depending on a vessel's Risk Group, TWICs must be checked either visually or electronically using a TWIC reader or as integrated into a PACS at the locations where TWIC-holders embark the vessel” to the existing requirement that the owners or operator of a vessel must ensure that only authorized TWIC-holders are granted unescorted access to secure areas of the vessel.[48] A clearer citation would have been to § 101.514(a)(1), which contained the proposed requirement that prior to each entry, all persons seeking unescorted access to secure areas in Risk Group A vessels and facilities must present a TWIC. The regulatory text was also unclear about what “prior to each entry” meant, and many commenters believed that it meant prior to each entry into a secure area of the vessel, which was contrary to the stated intent of the preamble.

As stated above, in this final rule, we are modifying the electronic TWIC inspection requirements so that they are both more flexible and more performance-oriented than described in the NPRM. In this final rule, we require electronic TWIC inspection rather than the presentation of a TWIC. Furthermore, again as stated above, we are clarifying the language relating to the locations of electronic TWIC inspection. The new language, contained in § 101.535(a), “Requirements for Risk Group A Vessels,” reads “prior to each boarding of the vessel.” We believe that this change should improve the clarity of the regulatory text.

The Passenger Vessel Association (PVA) noted the confusion between the preamble and regulatory text, noting in its comments that “The proposed rule states (proposed § 104.265(a)[49]), ‘Prior to each entry, all persons must present their TWICs for inspection using a TWIC reader.’” The PVA argued that “[t]he Coast Guard's explanatory material in the **Federal Register** suggesting otherwise cannot override the very clear language of the proposed regulation.” We agree that the language is confusing, and have clarified it appropriately. The commenter also recommended that the Coast Guard adopt a version of RUA that would allow a single verification of the TWIC status when the TWIC-holder reports to the secure area for the first time each day. While this was not what RUA, as proposed in the ANPRM, was intended to do, we note that the clarified electronic TWIC inspection requirements in this final rule will result in far fewer inspections on vessels than the commenter anticipated.

One commenter, who operates as a combined ferry/terminal operator, discussed methodologies to improve security through a “Combined Security Plan” that allowed them to effectively identify risk while allowing their employees to perform their duties in a secure and efficient manner. The commenter suggested that its ferries have multiple points of access from the terminal to the ferry as well as multiple points of access to secure areas within the ferry. The Coast Guard agrees that insofar as security measures between a terminal and ferry can be combined, a combined plan can produce a more effective and efficient security regime than separate plans. Furthermore, secure areas within terminals can be connected to the entrances of ferries. In those instances, where TWIC-holders pass directly from a secure area of the terminal onto a ferry, an additional electronic TWIC inspection is unnecessary. For that reason, we interpret the phrase “prior to each boarding of the vessel” in § 101.535(a)(1) to include the situation in which an electronic TWIC inspection has been carried out prior to boarding a ferry, and the TWIC-holder has not entered an unsecure area in the interim. We believe that such an allowance will reduce the costs of compliance with the electronic TWIC inspection program for combined ferry/terminal operators without compromising security.

Several commenters posed questions relating to a situation in which a Risk Group A vessel, such as a ferry, has multiple secure areas separated by unsecure areas, but sole control of its terminal facilities. These commenters asked whether it would be possible to have only one TWIC reader at each terminal facility for both vessel and facility workers. As explained below, such a system could meet the requirements for electronic TWIC inspection. If a worker is granted unescorted access to a secure area of a Risk Group A facility, and remains in the secure area, he or she may board a Risk Group A vessel without a second electronic TWIC inspection. We note that once on board a Risk Group A vessel, a worker does not need to undergo additional electronic TWIC inspections when entering secure areas.

One commenter stated that vessels at sea should be required to update the CCL if there are separate and distinct secure areas on board the vessel. We disagree, and note that the requirement for Risk Group A vessels is that electronic TWIC inspections are only performed when the personnel are boarding the vessel, not, like facilities, at each entry into a secure area. Therefore updating the CCL while at sea would not serve any functional purpose.

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[47] 78 FR 17816

[48] 78 FR 17830–17831, Amendatory Instruction 16a

[49] We note that the language cited is actually from proposed § 101.520(a)(1), not § 104.265(a).

3. Risk Groups B and C

In this final rule, we are completely removing any mention of additional TWIC requirements for vessels and facilities other than those covered under § 101.535, "Electronic TWIC inspection Requirements for Risk Group A." Many commenters noted the apparent differences between the language on Risk Groups B and C in the NPRM preamble and the proposed regulatory text in §§ 101.525 and 101.530, which pertained to Risk Groups B and C respectively.

In the preamble of the NPRM, we stated that we were making no changes to either of those groups. For example, in Section III.E.7.b of the NPRM, "Risk Group B TWIC Reader Requirements," we stated that "proposing requirements for Risk Group A only in this NPRM is indicative of our desire to minimize highest risks first. . . ." [50] Likewise, in Section III.E.8.b, "Risk Group C TWIC Requirements," we noted that "Under current regulations (which would not change under this NPRM) for vessels and facilities categorized in this NPRM Risk Group C, security personnel must visually inspect the TWIC of each person seeking unescorted access to secure areas." [51] Our preliminary RA echoed this language. In that document, we did not include any cost analyses relating to vessels or facilities in Risk Groups B or C.

However, as commenters noted, in proposed §§ 101.525 and 101.530, we included language from the ANPRM that contradicted the statements in the preamble that no new requirements were being proposed for Risk Groups B and C. The proposed regulatory text would have required vessels and facilities in Risk Groups B and C to undergo visual TWIC inspection prior to each entry into a secure area. Thus, the practical effect of such a requirement would have been to require security personnel be posted at each entry point, which many commenters argued would dramatically increase the compliance costs for MTSA-regulated vessels and facilities in Risk Groups B and C, contrary to the stated intent of the regulation. The specific comments are described in greater detail below.

We received a large number of comments from the owners and operators of passenger vessels that would have been categorized as Risk Groups B and C. These individuals suggested that the proposed regulatory text would impose severe burdens on their operations, burdens that would be extremely costly and produce relatively little in the way of security benefits. The PVA's comment summed up many of its members' statements, noting that "Group B and C passenger vessels and facilities have multiple and widely separated secure areas with large public access areas in between. TWIC-holders move regularly in and out of those spaces multiple times during the day. As a practical matter, this means that in those vessels and facilities, there must be some other person stationed in or outside of each secure area to visually inspect the TWIC and presumably bar the holder from entry if the visual inspection is unsatisfactory." [52] We agree with the PVA that, with regard to passenger facilities, the wording of the proposed regulatory text could have had this effect, but these concerns are moot because we removed the proposed provisions on Risk Groups B and C.

Many operators of passenger vessels argued that the requirement to visually inspect TWICs at each entry point into a secure area would be enormously expensive, impracticable, and provide little security benefit. One commenter suggested that the use of existing access control systems on vessels could be used in place of visual TWIC inspection on vessels. One commenter wrote, "we do not have enough berthing to add 2 additional people that would do nothing but sit at the galley door on opposite shifts and request to see the TWIC card of [the] same person multiple times per day." [53] Another commenter wrote that requiring a visual TWIC inspection at each entry to a secure area on a vessel "is a bit like asking your brother who lives in your household for his ID whenever he needs to use the restroom." [54] Commenters also argued that needing to present a TWIC to enter an unmanned engine room space could hinder access in an emergency. Many other commenters echoed the substance of these remarks. In this final rule, we hope to clarify that: (1) With regard to Risk Group A vessels, the requirement to undergo electronic TWIC inspection applies only upon boarding the vessel, and (2) there are no new requirements, for either visual or electronic TWIC inspection, or anything else applicable to vessels or facilities outside of Risk Group A in this final rule. The existing visual TWIC inspection requirements in 33 CFR Chapter I, Subchapter H continue to apply to vessels and facilities outside of Risk Group A.

We received similar comments pertaining to Risk Group B and C facilities. Many commenters requested that the final rule should state that approved FSPs using PAC 08–09 practices continued to be allowed for Risk Group B and C facilities. We reiterate that this final rule imposes no changes on the operation of Risk Group B or C facilities; accordingly, such practices will continue to be allowed. One commenter suggested that the guidance permitting voluntary use of TWIC readers, contained in PAC 01–11, be continued for Risk Group B and C facilities. While that guidance is rendered obsolete by this final rule, we note that its contents have been largely incorporated into the final rule as § 101.540, which permits non-Risk Group A facilities to use electronic TWIC inspection procedures in lieu of visual TWIC inspection on a voluntary basis.

One commenter recommended that language be added to proposed § 101.525 (Risk Group B) that would allow a PACS card to be used in place of a TWIC at each entry to a secure area. Some commenters noted that the PAC 08–09 practices are significantly less costly than inspecting a TWIC at each entry into a secure area. While the rule imposes no new TWIC inspection requirements on Risk Groups B or C, we follow this suggestion with regard to Risk Group A facilities in the form of increased flexibility for electronic TWIC inspection. One commenter added that this could be coupled with a periodic TWIC check to ensure it is still valid. We note that Coast Guard inspections, conducted at Risk Group B and C facilities, accomplish exactly this check.

4. Miscellaneous Questions Regarding the Locations of Electronic TWIC Inspection

In this section, we address certain questions raised by commenters on issues related to the locations where electronic TWIC inspections must take place. Several similar comments asked us to clarify what an "access point" to a secure area is. The commenter provided an example of an alarmed fire escape door that leads to a pier, which is designated as a secure area. In response, we would clarify that an "access point" is any location where personnel access from a non-secure area to a secure area is permitted, in any circumstance, by a facility's security plan. However, we agree with the commenter that requiring an electronic

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[50] 78 FR 17802.

[51] 78 FR 17803.

[52] USCG–2007–28915–0190, p. 12.

[53] USCG–2007–28915–0139.

[54] USCG–2007–28915–0215, p. 3.

TWIC inspection in the event of a fire would be unwise. For that reason, we are including language in § 101.535(e), allowing an exemption from electronic TWIC inspection requirements for emergency situations. We believe that this exemption will protect against unauthorized access to secure areas without compromising safety in the event of an emergency response.

The commenter also provided an example of a roll-up baggage door, where the porters bring in luggage they collect from guests at the curb in front of a cruise ship terminal. Next to the roll-up door is "a typical personnel door." The commenter asked if the two doors count as a single access point, or if they are two separate access points, where each door requires its own TWIC reader. Again we note that in this final rule, we are not requiring the installation of TWIC readers; instead the requirement is that prior to being granted unescorted access to a secure area, an individual must undergo electronic TWIC inspection. Thus, two doors to a secure area could be controlled by a single TWIC reader or PACS reader, if permitted in the FSP.

The commenter also asked about an area that switches between being secure and non-secure based on the operations taking place there at a given time. In such an instance (and permitted, we assume, by the FSP), when the area is designated secure, persons would need to undergo electronic TWIC inspection before being granted unescorted access. At times when the area was designated non-secure, there would be no such requirement. We would expect the relevant FSP to contain more detail on how such an area would operate.

D. Determination of Risk Groups

The third major area of comments related to the determination of which vessels and facilities should be placed into which Risk Groups. In §§ 104.263 and 105.253 of the NPRM, we proposed three different Risk Groups, A, B, and C, although there were no differences between the requirements for Risk Groups B and C. The proposed Risk Groups were as follows:

Risk Group A:

- Vessels certificated to carry more than 1,000 passengers;
- Vessels that carry CDC in bulk;
- Vessels engaged in towing another Risk Group A vessel;
- Facilities that handle CDC in bulk;
- Facilities that receive vessels certificated to carry more than 1,000 passengers; and
- Barge fleeting facilities that receive barges carrying CDC in bulk.

Risk Group B:

- Vessels that carry hazardous materials, other than CDC, in bulk;
- Vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues;
- Vessels certificated to carry 500 to 1,000 passengers;
- Vessels engaged in towing a Risk Group B vessels;
- Facilities that receive vessels that carry hazardous materials, other than CDC, in bulk;
- Facilities that receive vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues;
- Facilities that receive vessels certificated to carry between 500 and 1,000 passengers;
- Facilities that receive vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues;
- Facilities that receive a vessel engaged in towing a Risk Group B vessel; and
- All OCS facilities subject to 33 CFR part 106.

Risk Group C:

- Vessels carrying non-hazardous cargoes that are required to have a VSP;
- Vessels certificated to carry fewer than 500 passengers;
- Vessels engaged in towing a Risk Group C vessel;
- Facilities that receive vessels carrying non-hazardous cargoes;
- Facilities that receive vessels certificated to carry fewer than 500 passengers; and
- Facilities that receive vessels towing a Risk Group C vessel.

Most comments were related to the categorization of vessels and facilities in Risk Group A, with many commenters requesting clarification on how to classify their own facilities, or offering rationales for why vessels and facilities should be categorized differently. As stated in previous parts of this discussion, the NPRM did not propose any additional requirements for Risk Groups B or C, and thus, for purposes of the electronic TWIC inspection requirements, whether or not a vessel or facility is classified as Risk Group A is the only relevant distinction.

In this final rule, we have made a number of modifications to the classification of facilities and vessels in response to the comments. The major changes are summarized as follows:

- We have changed the crewmember exemption cutoff for vessels from 14 crewmembers to 20 crewmembers, as well as clarified how to calculate the number of crewmembers to apply this exemption.
- We have removed the specific reference to barge fleeting facilities from the Risk Group A classification, and now treat barge fleeting facilities like all other MTSA-regulated facilities.
- We have eliminated the distinction between Risk Groups B and C. Vessels and facilities are now classified as either Risk Group A or non-Risk Group A.

1. Risk Group A Facilities

In the NPRM, we defined Risk Group A facilities in proposed § 105.253(a) as: (1) Facilities that handle CDC in bulk; (2) Facilities that receive vessels certificated to carry more than 1,000 passengers; and (3) Barge fleeting facilities that receive barges carrying CDC in bulk. We developed Risk Group A, along with the other Risk Groups, using a risk-based analysis system that identified which types of facilities were exposed to the most risk in the event of a TSI. This system used the MSRAM to derive a numeric "consequence" for a class of facilities. Once the potential risk to a class of facilities was ascertained, we then determined whether a program of electronic TWIC inspection would provide utility in alleviating that risk. This analysis is described in far greater detail in the ANPRM [55] and the NPRM,[56] and we refer interested parties to those documents for a detailed discussion.

Several commenters raised issues relating to the fundamental nature of our analysis, arguing that certain factors, such as the geographic location of a facility or its proximity to higher-risk facilities should have been incorporated into our analysis. After considering the comments, we have decided to largely retain the overall structure of how Risk Group A is structured. The basis for the analysis is discussed in Section V.A, above.

Several commenters suggested that the MSRAM analysis used by the Coast Guard to determine Risk Group A was flawed, and that a different methodology to determine the Risk Groups should have been employed that would bring more facilities into the Risk Group A category. Many of these commenters recommended that the Coast Guard adopt a risk analysis approach that focuses on area risks or geography, rather than the risks associated with classes of facilities. For example, one commenter recommended that the risk analysis should have included the risk to port operations where the port has minimum channel depth, or for petrochemical facilities that would create a significant impact to commodity supplies, or chemical facilities where an attack could have significant environmental consequences.

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[55] 74 FR 13363.

[56] 78 FR 17810.

Other commenters recommended that the Coast Guard consider the geographic area surrounding a facility as the most important factor in determining the appropriate Risk Group. Similarly, another commenter stated that the Coast Guard should expand the risk-based concept and aggregate risks to the port area first, before using MSRAM to determine specific risks. In response, the Coast Guard considered a broad range of factors, including geographic location, when determining the Risk Groups. The totality of that analysis identifies the highest risk vessels and facilities.

One commenter stated that the Port of New York is the nation's highest-risk port, suggesting that TWIC inspection should also be used to mitigate risks associated with criminal activity such as drug trafficking, cargo theft, and alien contraband smuggling. The commenter suggested that TWIC readers should be required at more facilities in that port than are required under this rule. We are not requiring electronic TWIC inspection as a crime prevention measure, and we reiterate that the primary purpose of requiring electronic TWIC inspection is not to prevent crime, but to prevent TSIs at high-risk vessels and maritime facilities.

One commenter stated that MSRAM does not contain any data that identifies TWIC readers as a threat mitigation tool, and that assumptions must have been made that would connect the MSRAM data with mitigation scenarios based on TWIC readers. In response, as emphasized throughout this preamble, an electronic TWIC reader is a threat mitigation tool because it provides identity verification, card authentication, and card validity checks more effectively than visual TWIC inspection. In the MSRAM context, a target's "vulnerability" is defined as the probability that an attack will be successful. MSRAM measures target vulnerability as a product of three factors: (1) Achievability, which assumes the absence of all security measures and then factors in the degree of difficulty delivering an attack on a target; (2) Target Hardness, which considers the probability that the attack focal point would fail to withstand the attack; and (3) System Security, which considers the probability of a security strategy in place to successfully thwart an attack before it occurs. Electronic TWIC inspection is a component of System Security.

Some commenters argued that the relative locations of Risk Group A and B facilities should factor into the risk analysis. One commenter stated that the NPRM did not consider a scenario where a Risk Group B facility is immediately adjacent to a Risk Group A facility. The commenter suggested that a terrorist could use a counterfeit TWIC to gain access to the Risk Group B facility (which would conduct only a visual TWIC inspection), and then use the location to mount an attack on the adjacent Risk Group A facility. Other commenters echoed the sentiment, stating that a Risk Group B facility that is immediately adjacent to a Risk Group A facility should not automatically have less stringent requirements that could become a threat vector.

While we agree that this specific scenario was not used in our analysis, we also do not believe that it would be appropriate to consider. We note that in this scenario, all the counterfeit TWIC accomplishes is to allow the adversary to get to the perimeter of the Risk Group A facility. If the Risk Group B facility was not located in the adjacent location, then it would be even easier for the terrorist to get to the aforementioned perimeter. Electronic TWIC inspection is designed to thwart access to the secure area of Risk Group A facility, not to prevent access to the secure perimeter.

One commenter recommended that large container terminals should not be classified as Risk Group B, but rather as Risk Group A. The commenter stated that a disruption of operations at any one of these facilities could have a significant impact on the economy, and that the Coast Guard should have used secondary consequences in its economic analysis. While we agree that a disruption of a large container terminal could have significant economic impacts, we disagree with the suggestion that container facilities should be automatically classified in Risk Group A. As stated elsewhere in this preamble, MSRAM considers scenarios associated with threats to container facilities. However, for the purpose analyzing electronic TWIC inspection, we limited our consideration to attack scenarios that require physical proximity to the intended target. Controlling access to a target is an essential component of security from such attack scenarios because access control helps to detect and perhaps delay the attackers before they reach the target. Threats to cargo containers are typically not attack scenarios that require physical proximity to the intended target. Accordingly, electronic TWIC inspection would not mitigate such threats. Such threats are addressed in existing Coast Guard regulations (33 CFR 104.275 and 105.265) that specifically require owners and operators to implement detailed security measures relating to cargo handling on vessels and at facilities.

a. Alternative Security Programs

One commenter, representing the American Gaming Association, recommended that instead of the risk categorization approach proposed in the NPRM, the Coast Guard should adopt a case-by-case approach to classification of facilities participating in its Alternative Security Program (ASP). This commenter noted that the security measures adopted on these vessels and facilities can be more restrictive than Coast Guard regulations require, and that those vessels and facilities should not be required to use TWIC readers. Furthermore, the commenter stated that the TWIC reader technology may be duplicative with systems onboard gaming vessels. We disagree, for the reasons stated above, with using a case-by-case approach to risk categorization rather than the Risk Group system proposed in the ANPRM and NPRM. However, we note that several suggestions that the commenter made are permitted by this final rule. If the existing security system on a vessel or facility is duplicative of a TWIC reader (*i.e.*, is capable of conducting a card authentication, card validity check, and biometric match), then a dedicated TWIC reader would not be required. We believe that a PACS can be modified to meet these requirements with relatively little additional costs, as discussed in the accompanying RA.

Similarly, several commenters stated that the combined vessel and facility security plan, as adopted in the PVA ASP, should permit facilities to be exempt from electronic TWIC inspection requirements if the vessels they service are exempt. For reasons discussed below, we disagree. We note that all ASPs, including the PVA ASP, can be used to integrate security between passenger terminals and vessels, but that the ASP must meet all electronic TWIC inspection requirements in this final rule.

b. Determining Risk Group A Facilities

Several commenters asked questions or requested clarifications of issues related to whether certain facilities would be classified as Risk Group A facilities. Our thoughts on these specific questions are below:

One commenter requested clarification regarding a cruise terminal that handles general cargo (presumably not including bulk CDC) when cruise ships are not present. The commenter asked whether a Risk Group A classification would only apply to a facility when a passenger vessel certificated to carry 1,000 or more passengers was at the facility. In such an instance, movement between Risk Groups would be permissible, if detailed in the FSP in accordance with 33 CFR 105.253(b). One commenter suggested that allowing movement between Risk Groups would be unfair to those facilities that have installed electronic TWIC inspection technology. We disagree, and note that when subject to Risk Group A electronic TWIC inspection requirements, a facility would have to make full and complete use of such technology, and would incur all the costs of installing the technology.

One commenter requested clarification that a facility would not be classed as a Risk Group A facility if it handles multiple passenger vessels not in Risk Group A simultaneously. This is correct, a facility (assuming, of course, that does not handle or receive vessels carrying CDC in bulk) would only be classified as Risk Group A if it handles one or more vessels certificated to carry over 1,000 passengers. The relevant risk factor is the presence at the facility of a vessel certificated to carry more than 1,000 passengers. The relevant risk factor is not the mere presence on the facility of more than 1,000 people, which would be a transient event driven by simultaneous arrivals.

Several commenters requested clarification of the use of the word "handle." Proposed § 105.253(a)(1) categorizes facilities that handle CDC in bulk as Risk Group A facilities, but commenters had questions about how to interpret this phrase. These commenters requested clarification on how a facility would be classified if a vessel carrying CDC in bulk were to stop at a facility, but not transfer any of the bulk CDC cargo there. After considering the comments, and to clarify risk groups, we have determined that any facility that handles or receives vessels carrying CDC in bulk will be classified as Risk Group A. While moored at a facility, a vessel must rely on the facility's security program to adequately secure the interface between the facility and vessel and mitigate the threat of a TSI. For that reason, the facility should conduct electronic TWIC inspection to meet the security needs associated with handling or receiving vessels that carry CDC in bulk.

Discussions at public meetings prompted the Coast Guard to clarify the term "handle" as it related to non-maritime commerce. Specifically, the question was raised whether a facility would be classified as Risk Group A if it was used to transfer CDC in bulk through rail or other non-maritime means. In this situation, such a facility would be considered to "handle CDC in bulk" and would be classified as Risk Group A. This is because the bulk CDC would be on the premises of a MTSA-regulated facility, and thus the facility's access control system would need to be used to mitigate the risk of a TSI. We note that there are provisions where non-maritime activities of a facility can be located outside of the facility's MTSA footprint. In that situation, where the bulk CDC is not a part of the maritime transportation activities, it may be that a facility could define its MTSA footprint in such a way as to exclude that area. In such a case, the TWIC reader requirements that are being implemented in this final rule would not apply in that area.

Several commenters also requested clarification of the term "in bulk." The term "bulk" or "in bulk" is defined in the Coast Guard's existing MTSA regulations (33 CFR 101.105) as meaning ". . . a commodity that is loaded or carried on board a vessel without containers or labels, and that is received and handled without mark or count." Additionally, the term "bulk" is defined in 33 CFR 126.3 as ". . . without mark or count and directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging." To clarify, the use of hoses and conveyor or vacuum systems would be considered direct loading or unloading and thus involve "bulk." We have added such language to the definition of "bulk" in § 101.105 to improve clarity. We have also removed the phrase "on board a vessel" from the definition of "bulk or in bulk" to avoid confusion. Specifically, as stated above, a MTSA-regulated facility would be classified as Risk Group A if it handled bulk CDC offloaded by a train or other non-maritime means. A MTSA-regulated facility that handles or receives bulk CDC is determined to be Risk Group A whether or not the facility accepted the bulk CDC from a vessel. Finally, one commenter requested clarification that container terminals do not carry CDC in bulk. While we can clarify that CDC shipped in containers would not be considered bulk CDC, we note that some container facilities may also handle CDC in bulk.

Some commenters requested clarification of the term "receive," in regards to what the requirements would be if a Risk Group A vessel were received by a Risk Group B facility. The term "receive" is used in this final rule only in § 105.253(a)(2), which states that "facilities that receive vessels certificated to carry more than 1,000 passengers" are considered Risk Group A. In this instance, the word "receive" means that the vessel moors or transfers passengers to or from the facility. If there is a need for such a passenger vessel to moor up or transfer passengers at a non-Risk Group A facility, the COTP would need to be contacted to ensure that proper security measures are in place.

One commenter asked how Strategic Ports would be classified. A Strategic Port designation, which means the location is used by the military to load equipment, has no direct impact on the electronic TWIC inspection requirements. Individual vessels and facilities will be required to comply with the applicable parts of this regulation based on their specific operations.

One commenter asked if facilities that receive vessels certificated to carry more than 1,000 passengers would be classified as Risk Group A if all the vessels the facility received are exempted from the electronic TWIC inspection requirements by virtue of having fewer than 14 crewmembers. The commenter further stated that it is rare that the vessels certificated to carry more than 1,000 passengers ever carry that many, and that there are rarely 1,000 passengers in the facility. Regardless of this fact, pursuant to § 105.253(a)(2), such a facility would be required to conduct an electronic TWIC inspection prior to each entry into a secure area of the facility. We note that neither condition the commenter discussed is grounds for classifying the facility as anything other than Risk Group A. The fact that the vessels are exempt from the electronic TWIC inspection requirement due to their low manning requirement does not grant a TWIC exemption to the facility, for reasons discussed in greater detail below.

Furthermore, the fact that the ferries at issue "rarely" carry the number of passengers they are certificated to carry does not change the status of the facility either. Our analysis has shown that the class of facilities that receive large passenger vessels present a heightened risk of a TSI, and that the use of electronic TWIC inspection in such facilities is an effective means to mitigate that danger. We believe that the access control requirements in this rule represent a good balance between costs and security.

Several commenters were concerned that the dichotomy between electronic TWIC inspections on vessels and facilities could present problems for mariners. One commenter called a situation "absurd" where a ferry terminal, servicing ferries certificated to carry over 1,000 passengers, would be required to meet electronic TWIC inspection requirements, while the ferries themselves would be exempt from those requirements due to their low crew size. We disagree with the commenter's characterization of the regulations. Ferry terminals that handle large ferries present a risk of a large-consequence TSI, so much so that we believe that requiring a biometric identification before granting an individual access to the non-passenger areas of the ferry terminal is a warranted security burden. On the other hand, we do not believe that electronic TWIC inspection is necessary to gain access to the ferries themselves, considering that non-TWIC-holding passengers will also have access to the same vessels. Contrary to the commenter's assertion, we believe it is quite reasonable to only require electronic TWIC inspections when the TWIC-holder is accessing an area where non-TWIC-holders are excluded. As we stated previously, the electronic TWIC inspection requirements are designed in such a way as to only require a burden where the security benefits will be tangible and substantial, which is why they apply as they do.

Some commenters suggested that where the presence of, and access to, CDC in bulk can be isolated from areas not containing these products within a large MTSA footprint, the facility should be allowed to limit elevated security measures to the higher-risk area only. This is a subject that was also raised in the NPRM.[57] Upon consideration, and given the general flexibility accorded by this final rule, we believe that this suggestion is appropriate. If bulk CDC is contained in a discrete area of the facility, it may be possible to isolate that area from other areas of the facility. Any areas where bulk CDC is transferred, passed through, or stored (permanently or temporarily) would be subject to the electronic TWIC inspection access control requirements. If the owner or operator of a facility were to take this approach, we would still consider the facility a Risk Group A facility. However, the owner or operator would be permitted to delineate in the FSP a portion of the facility as not subject to the electronic TWIC inspection requirements. The FSP would also have to contain details of how unescorted access to other secure areas is still limited to TWIC-holders.

Finally, many commenters presented examples of specific situations where they believed that electronic TWIC inspection in parts or in all of their facilities was inefficient or redundant. With regard to those situations, we reiterate that an owner or operator may apply for a waiver of any requirement the owner or operator considers unnecessary, as provided in 33 CFR 104.130 and 105.130, as appropriate. We have endeavored to tailor these requirements to be as effective as possible, but certain situations must be dealt with on an individualized basis.

One commenter in a public meeting asked the Coast Guard to consider an exemption for LNG/LPG facilities not conducting transfer operations. Similarly, this commenter and others requested an exemption for cruise ship terminals when vessels are not present at the terminal. Without specific information, we cannot comment on the likelihood of a waiver, but note that in certain circumstances, facilities can change Risk Groups depending on operational needs.

One commenter in a public meeting stated that container facilities should not be considered CDC facilities, and would therefore not be in Risk Group A. Given the definition of "in bulk" provided in 33 CFR 101.105, any CDC being transported in a container (including tank containers) would be considered packaged and thus would not cause the facility to be classified as Risk Group A. We note that if a container facility were also used to transfer or store bulk CDC, it would be considered a Risk Group A facility and thus subject to electronic TWIC inspection requirements.

2. The Crewmember Exemption Does Not Apply to Facilities

Many commenters supported the Coast Guard's proposal to exempt vessels with 14 or fewer crewmembers, but felt that a similar exemption should be applied to facilities with 14 or fewer employees as well. For the reasons described below, we disagree with this concept and are not including an exemption for small facilities similar to the exemption for low-crew vessels.

One reason not to expand the electronic TWIC inspection exemption to facilities is due to the specific language of the SAFE Port Act. As stated above, the vessel exemption is predicated on Section 104 of the SAFE Port Act, codified in 46 U.S.C. 70105(m)(1), which prohibits the Coast Guard from requiring the placement of an electronic reader on a vessel unless the vessel has more individuals on the crew that are required to have a TWIC than the number we determine warrants such a reader. No similar mandate exists regarding facilities.

Secondly, we believe that the nature of access to facilities is fundamentally different from the nature of access to vessels, and thus the rationale that justifies an exemption for vessels with a low crew count does not transfer to facilities with a low employee count. As stated elsewhere in this preamble, the TWIC serves fundamentally different roles with regard to facilities and vessels, due to the nature of the respective populations. On vessels (with the exception of passenger vessels), everyone on the vessel is generally known to one another, and new persons are generally not introduced to the vessel population while at sea. For this reason, the electronic TWIC inspection requirements for vessels, when applied, require only that the electronic TWIC inspection occur when boarding the vessel, not prior to each entry into a secure area of the vessel (such as an engine room). Conversely, at facilities, the entrance, exit, and egress of persons who are not employees is a regular occurrence; drivers, contractors, pedestrians, mariners, and other non-employees are on facility grounds regularly. Indeed, truck drivers make up one of the largest populations of TWIC-holders. For this reason, there are many persons on facility grounds that are not "known" to facility employees, and so additional security measures must be employed to ensure that unescorted access to the secure areas of a facility is granted only to TWIC-holders. For Risk Group A facilities, we believe that the appropriate level of security is to conduct an electronic TWIC inspection of each individual before granting them such access. That is why electronic TWIC inspection at facilities is required "prior to each entry into a secure area," rather than only at the perimeter of the facility,[58] as is the case with vessels. Due to the differences in electronic TWIC inspection requirements, we do not believe an exemption from the electronic TWIC inspection requirements based on a low number of employees is appropriate for Risk Group A facilities.

One commenter, in addition to requesting the extension of the low crewmember exemption to facilities, specifically requested that barge fleeting facilities with 14 or fewer people be excluded as well. In this final rule, barge fleeting facilities are no longer a separate class of facilities specifically subject to electronic TWIC inspection requirements. However, barge fleeting facilities are treated as facilities, and are subject to the same electronic TWIC inspection requirements as other facilities.

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[57] 78 FR 17797.

[58] *See* § 101.535(b)(1).

3. The Low Number of Crewmembers Exemption

The NPRM proposed that, unlike facilities, vessels in Risk Group A are exempt from the electronic TWIC inspection requirements unless they have more than 14 TWIC-holding crewmembers. This exemption was based, in part, on the statutory limit imposed in the SAFE Port Act, 46 U.S.C. 70105(m)(1), which prohibits the Coast Guard from requiring the placement of an electronic reader on a vessel unless the vessel has more individuals on the crew that are required to have a TWIC than the number we determine warrants such a reader. In the ANPRM and the NPRM, we tentatively proposed that this number would be 14 crewmembers, basing our recommendation on an analysis conducted by the Towing Safety Advisory Committee (TSAC). For the final rule, factoring in comments received and assumed risks, we have increased this number to 20 crewmembers.

We received numerous comments on the proposal to exempt all vessels with 14 or fewer TWIC-holding crewmembers from the electronic TWIC inspection requirements. In the NPRM, we requested that commenters explain any alternative suggestions and provide available data to support their comments. Comments we received generally fell into two categories. Many commenters suggested different numbers for the exemption threshold, with a fair majority supporting a larger number, thus exempting more vessels from the electronic TWIC inspection requirement. The other main group of commenters requested clarification on how, specifically, we would calculate the crew size of any particular vessel to determine whether a Risk Group A vessel would be exempt from the electronic TWIC inspection requirements. Both items are discussed below.

4. Calculating the Total Number of TWIC-Holding Crewmembers

Several commenters raised questions as to how, specifically, the Coast Guard would calculate the number of TWIC-holding crewmembers on a vessel to determine whether the vessel would be exempt from the electronic TWIC inspection requirements. Upon review, we found that there was some degree of confusion with regard to how this number is determined. We have identified two approaches to calculating the exemption number that may have led to this confusion. One approach would be to calculate the number by counting the total number of persons employed as crewmembers on the vessel. The NPRM's original determination of 14 crewmembers was calculated using this approach. That number included the Master, Chief Engineer, and three four-person rotating crews. We counted the total number of persons employed as crew, whether or not all of them would serve together simultaneously.

The other approach would be to calculate the number by referring to a vessel's Certificate of Inspection (COI) regarding crew size, which does not contain information regarding multiple crew rotations, but rather just the manning requirements for the vessel. Using that methodology, the same vessel described above, with a Master, Chief Engineer, and several four-person rotating crews would actually have had six crewmembers. As explained more fully below, this final rule adopts the latter approach.

Commenters also put forth a number of detailed issues relating to how the number of crewmembers would be determined. One commenter noted that while at any given time during a shift, the total number of required TWIC-holders aboard will generally be 14 or fewer, during shift changes the number will swell to more than 14. The commenter went on to question the definition of the term "crewmember," noting that there may be TWIC-holders on board, such as security personnel, who are not members of the marine crew required under the vessel's COI. The commenter requested that the Coast Guard clarify the scope of the 14-crewmember exemption with regard to TWIC-holders who are not members of the marine crew.

Similarly, several commenters specifically requested that the Coast Guard clarify that the 14-crewmember threshold only includes the required number listed on the vessel's COI, and does not include "persons in addition to the crew," industrial workers, etc. Some commenters recommended that for uninspected vessels, "required crew" should include all personnel assigned to the vessel performing navigation, safety, and security functions. Commenters also asked whether crewmembers included additional individuals such as company representatives, cadets, and contractors. One commenter stated that 46 U.S.C. 2101(21) excludes certain company representatives from being counted as passengers, so they could be counted as crew. Also, in situations where a vessel is forced to carry persons other than crew, such as emergency responders, commenters asked if they would still be subject to the exemption from the electronic TWIC inspection requirement.

In response to these comments, the Coast Guard is providing additional detail and explanation regarding this exemption. Based on our own analysis, and on the comments received, we agree with the commenters who suggested that "crewmembers" should include all personnel required to hold a TWIC in the required manning section of the COI (and we note that there are no uninspected vessels subject to MTSA requirements). Other persons in the crew section and the "persons in addition to the crew" section of the COI do not count towards the calculation for total number of TWIC-holding crewmembers. We reached this decision for the following reasons.

First, whether a vessel is subject to electronic TWIC inspection requirements should not vary based on transient circumstances, such as whether a company representative is on board, or a crew change causes the number of TWIC-holders on the vessel to temporarily swell and exceed the threshold. Electronic TWIC inspection programs must be incorporated into a security plan and followed consistently. We believe that the stability from having a consistent electronic TWIC inspection process will help serve the goals of the inspection requirements while minimizing the burden on vessels and facilities in Risk Group A.

Second, establishing the minimum manning requirement as the threshold number helps to ensure that other manning decisions are not affected by the electronic TWIC inspection requirements. For example, if it were based on the total number of employed crew, irrespective of whether that crew was required for manning the vessel, then some owners or operators of vessels might choose to lower their staffing requirements rather than introduce the new procedures. We received several comments suggesting that certain companies might choose to eliminate staff rather than comply with electronic TWIC inspection requirements. Tying the electronic TWIC inspection requirements to the minimum manning requirements will significantly reduce the risk of this occurring. The minimum manning requirements of a vessel are tied to the intrinsic nature of the vessel, and are not nearly as elastic as the other crewing needs of the vessel.

5. Threshold for the Crewmember Exemption

Based on the TSAC recommendation, we proposed in the NPRM that the cutoff number of crewmembers that make a vessel exempt from the electronic TWIC inspection requirement should be 14. We specifically requested comments from the public on whether 14 is an appropriate cutoff number, and requested explanations and available data to support any arguments for alternative numbers. We received numerous comments regarding this issue. Some commenters suggested that 14 was an appropriate number, but the majority suggested that it be increased.

The PVA and other commenters suggested that the Coast Guard should not have followed TSAC's recommendation, as not all sectors of the domestic maritime industry have input into that group's recommendations. The PVA suggested that 20 was a more appropriate number, noting that the largest minimum manning requirement for its members' vessels was 16. This figure is larger than 14, but not so large that long-time crewmembers would not recognize each other. This figure was suggested as appropriate because it would be a figure developed with the consultation of industry.

Similarly, many passenger vessel operators suggested that the exemption threshold be set high enough to exempt passenger vessels. One commenter suggested that the threshold number of 14 did not make sense, and that even with a crew of 20–30 people, it would be impossible for an imposter amongst them to go unnoticed. Another commenter suggested that 40 crewmembers would be a better threshold, arguing that the regulatory compliance costs of electronic TWIC inspection, added to other costs relating to security, were too onerous.

After considering all comments, we have decided to increase the number to 20 crewmembers as the figure for determining the threshold number under 46 U.S.C. 70105(m). Considering input received from all areas of industry, we believe it is an appropriate crew size at or under which all crewmembers will be able to quickly identify people who do not have unescorted access to secure areas. We realize that this may be a conservative figure, and that there is no hard number at which all crewmembers will recognize each other by sight. This number is highly dependent on the length of time the crew has served together, and on the reliability of every individual crewmember's memory. Nonetheless, we believe that the figure of 20 crewmembers presents a reasonable threshold at which all members of the crew can be realistically be expected to recognize one another. However, we are continuing to study the issue, and may propose to expand the electronic TWIC inspection requirements by reducing the exemption threshold in a future rulemaking.

The Coast Guard realizes that increasing the crewmember threshold now exempts not only most passenger vessels, but many vessels that carry CDC in bulk. We are comfortable with this exemption at this time for two reasons. First, as stated by many of the commenters, we believe that a crew of 20 on a vessel that carries CDC in bulk will all be familiar with one another, so the risk of an unauthorized person being unnoticed on the vessel is slim. Second, due to the requirements for electronic TWIC inspection at the facilities where the CDC vessels conduct a majority of their business, the vast majority of these crewmembers will have their TWIC verified when passing through the facility on their way to the vessel, during crew changes or other trips ashore. Finally, one commenter in a public meeting noted that TWIC readers on vessels may be exposed to explosive atmospheres, and that therefore, TWIC readers must be intrinsically safe. In the event that TWIC readers are installed in hazardous areas, they would need to comply with all applicable requirements associated with those areas, which would at the minimum likely entail additional costs for testing and certification, and we note that no TWIC reader on the QTL is currently certified as intrinsically safe. For these reasons, we believe that imposing an additional requirement that crewmembers undergo an additional round of electronic TWIC inspection each time they board the vessel would provide limited security value for vessel with fewer than 20 crewmembers carrying bulk CDC.

6. Outer Continental Shelf Facilities

In the NPRM, we proposed to characterize all OCS facilities as Risk Group B, meaning that they would not need to undertake electronic TWIC inspection. In this final rule, the Coast Guard continues to exclude OCS facilities from electronic TWIC inspection requirements. One commenter, an owner of some OCS facilities, asked whether TWIC readers could be placed at "the point(s) of embarkation" as opposed to placing TWIC readers on the OCS facility itself. Such a placement would be permissible if described in an approved FSP. However, we note that because OCS facilities are not considered Risk Group A, no electronic TWIC inspection requirements will apply as a result of this final rule.

7. Vessels and Facilities Not in Risk Group A

Many commenters supported the Coast Guard's decision not to include additional requirements for Risk Groups B and C in the NPRM. We appreciate the support, and agree that at this time, only vessels and facilities in Risk Group A will be affected by the electronic TWIC inspection requirements in this final rule. However, as stated in the NPRM, this final rule "should not be read to foreclose revised TWIC reader requirements in the future."[59] Many commenters took this, and similar statements, as an indication that we had planned to extend electronic TWIC inspection requirements to Risk Group B vessels and facilities. As a result, we received several comments on the categorization of vessels and facilities within those Risk Groups.

One commenter suggested that all facilities, including those proposed to be in Risk Groups B and C, should be required to have at least one portable TWIC reader. The commenter stated that this would allow the facility to complete a comprehensive check of a TWIC, which would help to deter potential attackers by making it more likely that they would be caught. While we agree that adding electronic TWIC inspection to all facilities would produce a security benefit, for the reasons extensively detailed in this rulemaking, we do not believe that such measures would be efficient at this time for lower-risk facilities. The commenter also argued that security guards should not manually check the CCL during visual TWIC inspection, as it could distract him or her. We note there are no requirements to check the list of cancelled TWICs during visual TWIC inspection, nor does this rulemaking affect visual inspection procedures.

One substantial change being made in this final rule is the discontinuation of the distinction between Risk Group B and Risk Group C. The distinction between these two Risk Groups was relevant in the ANRPM, where we had proposed that Risk Group B vessels and facilities would be required to use TWIC readers on a random basis, whereas Risk Group C vessels and facilities would not be required to use TWIC readers at all. However, in the NPRM, we proposed to eliminate the random TWIC screenings from the Risk Group B requirements, and thus there was no distinction in requirements between those two Risk Groups. Nonetheless, we still proposed that the terminology for Risk Groups B and C be included in the regulations. Despite the lack of distinct requirements, many commenters read the NPRM to mean that electronic TWIC inspection requirements would be applied in some manner to Risk Group B vessels and facilities, and many commenters discussed the criteria by which vessels and facilities were classified as Risk Group B or C.

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[59] 78 FR 17790.

One commenter did not support the proposed placement of Oil Spill Response Vessels and Oil Spill Response Barges in Risk Group B, arguing that these vessels carry primarily an oily water mixture, rendering them at low risk for terrorist attack. The commenter provided additional analysis distinguishing Oil Spill Response Vessels from tank vessels, and requested that they be classified as Risk Group C.

Multiple commenters supported the decision to place Offshore Supply Vessels in Risk Group C, but wanted to clarify the definition of "Offshore Supply Vessel" for the purposes of TWIC requirements.

One commenter argued against the placement of all OCS facilities in Risk Group B. The commenter believed they should be subject to the same site-specific analysis that other facilities are subject to, and placed into Risk Group B or C as appropriate.

Several commenters responded to the Coast Guard's request for information as to whether petroleum refineries and storage facilities should be categorized as Risk Group A. Some commenters stated that it would be inappropriate for the agency to arbitrarily re-categorize these facilities without supporting study and analysis, and requested that if the Coast Guard omitted a risk in its initial analysis, a second notice and comment opportunity should be provided. One commenter noted that, according to the Coast Guard's RA, the risk level for petroleum facilities was more comparable to Risk Group C than Risk Group A. Commenters also noted that due to the spacing of petroleum tanks at facilities, it is highly unlikely that a fire at one tank could "jump" to another.

Several commenters provided the Coast Guard with a 2008 study entitled "Risks Associated with Gasoline Storage Sites," which they argued demonstrated that gasoline does not pose a high risk of off-site consequences if involved in an incident, particularly one related to security.

One commenter expressed concern about the expectation regarding the phase-in statements made in the NPRM, stating that the absence of "definitive statements" has left the owners and operators of facilities in Risk Groups B and C wondering what will happen and what they should do.

Similarly, one commenter stated that it seemed as if "phased in" was already the basic approach being taken by the Coast Guard, and that revisions to the electronic TWIC inspection requirements were all but certain. That commenter requested that instead of this approach, the Coast Guard should specifically identify the vulnerabilities that will be addressed and develop a proposal accordingly. Finally, commenters noted that if the Coast Guard were to propose expanding electronic TWIC inspection requirements beyond Risk Group A, a new Regulatory Flexibility Act analysis would be required.

One commenter drew a distinction between petroleum refineries and petroleum storage facilities. The commenter stated that the petroleum storage facilities only store petroleum, whereas refineries may contain many types of more hazardous materials, such as hydrogen, although the commenter also stated that such facilities are well-equipped to handle those materials.

Based on the comments received on this issue, we are not categorizing petroleum storage or refining facilities as Risk Group A in this final rule. Furthermore, we note that if and when the Coast Guard decides to propose additional electronic TWIC inspection requirements for facilities not currently classed as Risk Group A, global factors such as the cost of implementing electronic TWIC inspection, risk factors relating to the threat of a TSI, or other unforeseen conditions may have changed, necessitating a reconsideration of which vessels and facilities should be subject to additional security measures. The factors raised by commenters will be considered if and when additional TWIC inspection requirements are proposed in the future.

We agree with the argument put forth by commenters that before extending electronic TWIC inspection requirements, a revised analysis of the costs and benefits should be undertaken and that opportunity to comment on those proposed requirements should be provided. Given the arguments raised in the comments, it is clear that more analysis needs to be conducted before the requirements of electronic TWIC inspection are extended to vessels and facilities not in Risk Group A. We do not believe that setting out the risk parameters for the next group of vessels and facilities to which electronic TWIC inspection may be applied is appropriate at this time. If and when the electronic TWIC inspection requirements are phased in further, the Coast Guard believes that the additional flexibility afforded by not having preset definitions for the lower-tier Risk Groups will allow us to better tailor the future rulemakings appropriately. As the analysis of risks, threats, and costs continues to evolve, we will conduct further analysis as appropriate as well as solicit additional information from the public.

8. Barge Fleeting Facilities

The inclusion in Risk Group A of barge fleeting facilities that handle barges carrying CDC in bulk was a topic discussed by a large number of commenters. The Coast Guard received comments from a variety of barge fleet operators, towing operators, and trade associations. Universally, comments on this subject argued that barge fleeting facilities should not be required to install TWIC readers. For the reasons described below, based on the comments received, we have removed the separate requirement that barge fleeting facilities that handle barges carrying CDC in bulk are specifically considered Risk Group A. Instead, barge fleeting facilities are considered facilities, and may be required to perform electronic TWIC inspection if the standard criteria for Risk Group A are met.

Barge fleeting facilities are defined in 33 CFR 101.105 as "a commercial area, subject to permitting by the Army Corps of Engineers . . . or pursuant to a regional general permit[,] the purpose of which is for the making up, breaking down, or staging of barge tows." Because this rulemaking would only affect barge fleeting facilities that interact with barges carrying CDC in bulk, only those barge fleeting facilities which are used for the staging of barge tows would be affected by this final rule. In the NPRM, we proposed that all barge fleeting facilities that service barges carrying CDC in bulk would be considered Risk Group A.

Comments on why barge fleeting facilities should not be included in Risk Group A fell into four general categories. First, many commenters argued that the cost of installing TWIC readers at barge fleeting facilities would be higher than the installation costs at other facilities due to their remoteness, and that the Coast Guard's preliminary RA had not taken this into account. Second, several commenters argued that due to the remote location or lack of permanent infrastructure of many barge fleeting facilities, the consequences of a TSI would not be so great as to warrant an inclusion into Risk Group A. Third, one commenter argued that because barge fleeting facilities only service vessels that would be exempt from the TWIC reader requirement (because they have fewer than 14 crew), the facilities should also be exempt. Finally, several commenters argued that a TWIC reader would not enhance security at barge fleeting facilities. We address each of these comment categories below.

The cost of installing TWIC readers at barge fleeting facilities was cited by commenters as a reason to reconsider placing them in Risk Group A. Commenters generally argued that logistical considerations made installing TWIC readers in barge fleeting facilities substantially more expensive than at traditional installations. Several commenters stated that infrastructure costs, such as electricity, Internet access, and a facility to protect the TWIC reader would cause this requirement to be dramatically more expensive than originally considered. Similarly, commenters stated that these costs were not considered by the Coast Guard in its preliminary RA. Multiple commenters stated that the $300,000 initial phase-in costs estimated for bulk liquid facilities seemed like a low estimate. These commenters suggested that they would refuse to handle barges carrying bulk CDC rather than bear this increased cost, and that a final rule would cause rates to rise at other facilities. Similarly, commenters suggested that the decision to require TWIC readers at these barge fleeting facilities could actually be detrimental to security because, building on the idea that many facilities would refuse to handle bulk CDC barges, those barges would become concentrated at the few facilities that did allow them, thus increasing the risk profile of the fleeting areas that service them.

We disagree with the notion that TWIC readers would be substantially more expensive to operate at barge fleeting facilities than at other types of facilities. As summarized above, the commenters who made this argument all cited various infrastructure costs, including installing electrical connections, Internet service, and a facility to protect the TWIC reader as drivers of the increased costs. However, all of these costs are associated with fixed TWIC readers, which are not required by this rule. Isolated facilities without electrical or data connections could use portable electronic readers to comply rather than undertake these measures to install fixed readers. We note that portable electronic readers can be, and are, operated using battery power and wireless communication technology to scan TWICs and check them against the list of cancelled TWICs.

With regard to our preliminary RA, we disagree that the costs of TWIC readers was not applied to barge fleeting facilities. As stated above, as portable electronic readers can be used to conduct electronic TWIC inspections without expensive upgrades to infrastructure, we believe that the price of portable electronic readers estimated in the preliminary RA is applicable to barge fleeting facilities that are not connected to electrical and information infrastructure. Furthermore, barge fleeting facilities were counted in the overall analysis of facilities covered by the proposed rule. Thus, we believe that the preliminary RA sufficiently analyzed the cost impacts for barge fleeting facilities.

Numerous commenters argued that barge fleeting facilities are so isolated they should not be placed in Risk Group A. For example, one commenter recommended that barge fleeting facilities be categorized as Risk Group C, or as an alternative, CDC fleeting areas should be categorized using a risk-based approach based on the geographic location in relation to populations, with those in higher-density locations placed in Risk Group A. One commenter added that for economic reasons, fleets are usually far removed from major industrial or population centers, thus limiting the risk as potential targets for terrorist attacks.

Because of the MSRAM methodology used to determine risk, we disagree that perceived geographic isolation of a particular facility alone should justify lesser security requirements. The risk groupings are based on the averaged MSRAM scores for each class of facility. In conducting our risk analysis, one of the primary factors used was an estimate of the average maximum consequences of a TSI on a class of facility. In MSRAM, the Coast Guard calculates the maximum consequence for each facility, which is the estimate of all damages that would occur from the total loss of a facility caused by a TSI resulting from a terrorist attack. This singular maximum consequence score factors in the total loss of a target, factoring in injury, loss of life, economic and environmental impact, symbolic effect, and national security impact. Further included in the calculation is an estimation of damage done to areas surrounding the facility that would be affected in the event of a TSI, meaning a facility in a densely-populated area could have a much higher maximum consequence score if a TSI would inflict damage on nearby populated areas. Then, the *average* maximum consequence for the class of facilities is derived from the calculations of each facility in the class, taking into account their specific geography. Thus, geographic isolation, or lack thereof, has already been considered in the score calculation. Even considering the geographic isolation of some barge fleeting facilities, this class as a whole presents a risk of a serious TSI, which is why it was included in Risk Group A.

One commenter also argued that because tugboats that service barges are exempt from the requirements for electronic TWIC inspection, due to having fewer than 14 crewmembers, then the barge fleeting facilities should not be subject to TWIC requirements. In the discussion relating to electronic TWIC inspection requirements at facilities that service exempted vessels, we discussed in detail why a facility may be required to conduct electronic TWIC inspection, even if the vessels the facility services are exempted due to low crew counts. This analysis applies equally with regard to barge fleeting facilities.

A variety of other arguments were made to exclude barge fleeting facilities from the electronic TWIC inspection requirements. For example, a commenter argued that barge fleeting facilities by their very nature do not interact with vendors or visitors. We note that TWIC requirements apply to permanent personnel as well as vendors and visitors (some of whom may not have TWICs, and would thus need to be escorted), and that electronic TWIC inspection provides several security enhancements, such as the ability to detect revoked TWICs, that are applicable to personnel as well as vendors and visitors.

Some commenters stated that fleet personnel traffic is very low compared to regular shore maritime facilities and therefore are very low risk. We note that regular personnel traffic is not related to the risk that electronic TWIC inspection is designed to mitigate.

Electronic TWIC inspection helps to ensure that unauthorized personnel are not granted unescorted access to secure areas. This can happen regardless of the number of persons on the facility.

Several commenters argued that screening for personnel on barge fleeting facilities is already in place, and is extensive, including TWIC checks. As stated above, for high-risk facilities, we do not believe that visual TWIC inspections provide enough security. This final rule requires that TWICs be electronically inspected before unescorted access to secure areas of a MTSA-regulated, high-risk facility is granted. This logic applies to barge fleeting facilities as well as other facilities.

One commenter described a barge fleeting facility as "one of the few safe places" for crew transfers. The commenter implied that requiring crewmembers to run their cards through an electronic reader, which the commenter described as redundant and burdensome, could somehow impact safety. Without additional reasoning, we see no linkage between the safety of the crew and the need for security measures, except for the obvious benefits of protecting the crew from a TSI.

Finally, several commenters argued that due to the nature of barge fleeting facilities, TWIC readers would not provide security benefits. One commenter stated that if there is no access from the riverbank to the area where the barges are stored, then the TWIC reader is not adding any security value. Similarly, several commenters noted that while electronic TWIC inspection is required at the access points to each secure area, barge fleeting facilities do not have defined access points, but rather people come in via waterways. Several commenters described barge fleeting facilities as "parking lots," and noted that very few individuals from outside the fleeting facility, other than the crews of tugs, enter the facility. Oftentimes, due to a lack of other means of access, persons entering the facilities need to come via vessel and can do so only with the coordination of the FSO. Lastly, one commenter, while arguing for an exemption for barge fleeting facilities, stated that its barge fleeting facilities have a different risk profile than land-based facilities, noting that the fleeting areas are "simply unmanned barge parking lots continuously serviced by towing vessels." [60]

We have carefully considered the arguments of these commenters, and believe that we can address their concerns through a modification of the regulatory requirement. If a typical maritime facility met the specific criteria that these commenters describe, where there is no bulk CDC at the facility to protect, and no access points at which electronic TWIC inspection would be conducted, the facility would not be considered a Risk Group A facility. We believe that with regard to barge fleeting facilities, the same standard should be applied. For that reason, we are removing the specific reference to barge fleeting facilities in proposed § 105.253(a)(3). Instead, we are adding text, in § 105.110(e), Exemptions, which clearly states that barge fleeting facilities that do not have a secure area are exempt from the requirements in 33 CFR 101.535(b)(1). Based on this change, many of the concerns from the commenters regarding the application and utility of electronic TWIC inspection will be addressed.

We note that simply because the reference to barge fleeting facilities has been deleted from proposed § 105.253(a)(3), some barge fleeting facilities will still be required to comply with electronic TWIC inspection if they meet the requirements of § 105.253(a)(1). Thus, if a barge fleeting facility handles or receives CDC in bulk, it would be considered to be a Risk Group A facility, and would be subject to the electronic TWIC inspection requirements. However, we note that the electronic TWIC inspection requirements would be limited to secure areas only, as towing boats could still service barges without having their crews' TWICs electronically inspected (see the discussion in Section V.C.1, above).

9. Switching Risk Groups

Several commenters requested additional clarification and explanation regarding the NPRM's discussion of moving between Risk Groups. In the NPRM, the Coast Guard stated that it was adding §§ 104.263(d) and 105.253(d) to "address the movement between risk groups by vessels and facilities, based on the materials they are carrying or handling, or the types of vessels they are receiving at any given time." [61] These provisions, which are located at §§ 104.263(b) and 105.253(b) of this final rule, provide flexibility to owners and operators of vessels and facilities that only meet the criteria for Risk Group A classification on an infrequent or periodic basis, such as a facility that only occasionally receives a shipment of bulk CDC. Based on the comments received on this issue, we are finalizing this requirement without change.

One commenter supported the Coast Guard's proposal for movement between Risk Groups noting that the proposal would grant a facility a degree of flexibility to tailor its security precautions to the TSI risks posed at a given time. We appreciate the support.

In the NPRM, we stated that an owner or operator wishing to take advantage of one of these provisions would be required to explain how the vessel or facility would move between Risk Groups in an approved security plan, and that the plan would be required to account for the timing of such movement, as well as how the owner or operator would comply with the requirements of both the higher and lower Risk Groups.

One commenter requested more explicit guidance on the criteria for facilities to move between Risk Groups, asking for guidance regarding the process and for the types of security measures that would need to be in place for a facility to move from a higher Risk Group to a lower one. In response, we note that moving between Risk Groups is not dependent on security measures, it is dependent on whether a facility's change in operations moves it into a different Risk Group. For example, if a facility that periodically handled CDC in bulk were to cease handling that material, it could move from a Risk Group A facility to a non-Risk Group A facility. While such a move is independent of any change in security measures, we note that the facility would still have to amend its FSP with regard to any changes in security procedures.

One commenter stated that his facility occasionally handles bulk CDC for short periods of time. The commenter supported the NPRM's proposal to permit switching Risk Groups, but requested that is should be possible to do so "without a lot of bureaucratic paperwork." In such an instance, an FSP could contain two alternative security arrangements, one for operating as a Risk Group A facility, and one for operating as a non Risk Group A facility, along with the process for switching. Assuming that such an FSP was approved by the COTP, then switching risk groups could be accomplished without additional paperwork each time the operator changes risk groups.

E. Responses to Economic Comments

The Coast Guard received numerous comments from organizations and individuals regarding the costs and benefits associated with the requirement for electronic TWIC inspection. Many commenters, responding to specific requests for information, provided details and opinions regarding the costs of installing and operating an electronic TWIC inspection system. The issues involved the specific costs of purchasing and installing electronic TWIC reading equipment, the operational details concerning electronic TWIC inspection (including how it could increase or decrease the number of persons employed in security positions), and the costs to transportation workers who may need to replace malfunctioning TWICs. We appreciate these comments and have attempted to integrate them into our RA. We address the specific topics in the sections of this preamble below.

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[60] USCG–2007–28915–0195, USCG–2007–28915–0213.

[61] 78 FR 17815–6.

1. Costs of TWIC Readers

We received numerous comments from both suppliers and users of electronic TWIC inspection equipment regarding the standard costs of TWIC inspection equipment. In the NPRM, we estimated the average costs of TWIC readers by researching the equipment costs for all TWIC readers that have passed the TSA's test to conform with its Initial Capability Evaluation (ICE) test, which is maintained and made available to the public by TSA.

One commenter stated that the preliminary RA overestimated the costs of procuring TWIC readers. The commenter stated that the TWIC Pilot Report overstated the costs of TWIC readers, as pilot participants used grant money for incidental security needs, such as PACS, costs related to guard stations, lift gates and fencing. We disagree with the commenter's analysis, and note that we did not use the pilot grants as a basis for the costs of TWIC readers. As stated in the NPRM RA (Section 4.1.1., TWIC reader costs), the costs of TWIC readers were determined using approved TWIC readers that had passed the TSA ICE test.

Multiple commenters stated that the NPRM RA overestimated the cost of TWIC readers, and of the software, needed. One commenter also stated that the Coast Guard used overstated software prices that came from a single supplier and should have used $4,250 for both fixed and portable TWIC readers that included both hardware and software. The commenter added that the price of electronic TWIC inspection continues to fall as technology develops and is deployed on a larger scale. The Coast Guard did not use pricing information from a single supplier, but relied on multiple vendors' publicly available information for regulatory analyses supporting the NPRM and this final rule. While we agree that the price has fallen, we cannot use the prices cited by the commenter directly. However, we note that we have adjusted the TWIC reader cost prices in the final RA. The NPRM RA's TWIC reader cost estimates relied on the ICE List and utilized those equipment costs listed on the U.S. General Services Administration (GSA) price schedule. The QTL includes all TWIC readers that are currently approved by TSA (at the time the final RA was developed) for use in reading TWICs. For the final rule RA, instead of using GSA schedule listed prices for TWIC readers as was the case for the NPRM RA, we utilized the QTL's TWIC reader information to obtain an average cost for portable TWIC readers, and used the GSA schedule for fixed TWIC readers. We note that, for the final rule's cost analysis, we used average TWIC reader prices that we estimated $5,373 for fixed TWIC readers and $7,035 for portable TWIC readers. These prices are close to the one the commenter suggested at $4,250 for either fixed or portable TWIC reader.

The same commenter also added that it would not be necessary to purchase an entirely new PACS software system, and that one could simply add an electronic reader to the existing PACS that supports the perimeter access points for some entities. We agree, and go further in our RA, noting that it is possible to integrate biometric input functions into an existing PACS, rather than install a separate integrated TWIC reader. Use of this discretionary option can reduce electronic TWIC inspection costs substantially, depending on the business operations of the facility using such a system. However, we do not quantify the potential for these cost savings in the RA.

The commenters also made statements regarding the cost for CCL updates, which were echoed by other commenters. They stated that updates to the CCL should be an automated function taking about five seconds, and therefore, these should not be included as an ongoing item with assigned labor expense in the RA. In the NPRM RA, we estimated that the costs to update the CCL would be, on average, 30 minutes per week, which comes to 26 hours per year. In the final analysis, this figure is unchanged. While we recognize that some larger facilities may be able to automate this process, we do not believe that all facilities will have such an automated solution.

One commenter stated that the adoption of the QTL could cause "change order costs" to replace more expensive TWIC readers, and that the facilities who need to change TWIC readers should get grants to cover these costs. The Coast Guard disagrees. The final rule will allow many different types of biometric scanners in addition to the ones published on the TSA's QTL, and the rule is not design-prescriptive, so many entities will be able to continue to use existing equipment and therefore should not incur additional costs. The Coast Guard is not mandating that owners or operators use only the TWIC readers listed on the TSA's QTL in this final rule.

2. Number of TWIC Readers at Vessels and Facilities

Additionally, several commenters believed that the Coast Guard has not appropriately addressed the overall numbers of TWIC readers. Several commenters claimed that the NPRM and the RA did not contain accurate estimates of the number of TWIC readers needed for a vessel or a facility. One commenter, who owns multiple vessels and a terminal, estimated that it would need as many as 20 TWIC readers to comply with the proposed regulatory text.

One commenter described the Coast Guard as contradicting itself, by stating in the preamble that Risk Group A vessels would need only one TWIC reader, at the entrance to the vessel, yet the proposed regulatory text required a TWIC reader at "each entry."[62] Another commenter, a city government agency in charge of passenger ferries and terminals, also disagreed with the idea of one point of access per ferry. That agency estimated at least 62 TWIC readers would be necessary for their facilities alone.

We note that the confusion regarding the regulatory text language in the NPRM, which stated that TWIC readers were required "prior to each entry," has been thoroughly discussed above. In this final rule, most vessels are exempted from electronic TWIC inspection requirements, and those subject to them are only required to conduct such an inspection once, prior to entry onto the vessel.

With regard to facilities, we clearly state that electronic TWIC inspection must be conducted prior to each entry into a secure area. Given the nature of facilities, we acknowledge that many facilities will require multiple TWIC readers or other machines capable of conducting electronic TWIC inspection, either because they have a large number of access points to secure areas, or because they have a high throughput of people who must undergo electronic TWIC inspection in a timely manner.

One commenter disagreed with the idea of "one point of access" to a ferry, as there may be multiple points of access, and the proposed rule might have required them to install TWIC readers at 62 locations, with additional staffing, to meet the requirements. The Coast Guard disagrees with this assessment. The commenter is not necessarily required to purchase a large number of TWIC readers because the electronic TWIC inspection for the vessel crew can be executed on the facility side, rather than at each and every access point to the ferry or the vessel. Given the "combined security plan" discussed by this commenter above, it is permissible that a ferry operating a secure facility could have no dedicated TWIC readers, if all crew boarded from secure areas of the facility. Thus, such a ferry operator could comply with the electronic TWIC inspection requirements in this final rule without a wholesale replacement of its security infrastructure with new TWIC Readers.

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[62] *See* 78 FR 17803 and proposed § 104.265(a)(4), 78 FR 17831.

Several commenters provided qualitative discussions regarding the number of TWIC readers that would be needed at passenger terminals, which while not providing firm numerical information, helped the Coast Guard refine its assessment of how the final rule would affect these sorts of terminals. One commenter argued that the Coast Guard "does not fully understand the day-to-day operations of Group A passenger vessels and facilities . . ." and that "most of these vessels, terminals, and facilities are designated "public access areas", with only small areas designated secure, which "tend to be located away from one another." The commenter provided examples of "a fuel storage area here and a secure communications room elsewhere" as examples of dispersed secure areas, and stated that "the everyday reality for a TWIC holder is that he or she is likely to move between secure areas and public areas, as well as between the vessel and facility, multiple times a day in multiple locations."

Similarly, operators of other passenger terminals made qualitative remarks regarding the number of TWIC readers needed. One commenter, operating a large facility on the West Coast, stated that "installation of TWIC readers on our vessels and at our terminal would provide a negligible improvement in security, which would come at an unreasonable cost given that WSF has already implemented a superior security infrastructure." We note that, at the time the comment was made, the NPRM had not proposed the option that would allow the operators of facilities to integrate electronic TWIC inspection into their PACS. Given comments like these, we expect that larger passenger facilities that have already implemented PACS would be likely to use that option rather than installing TWIC readers in a parallel security structure.

Commenters representing smaller facilities also provided qualitative information. One commenter stated that "our terminals are a mix of secure and public areas where employees move between areas throughout the day," indicating that TWIC readers would be needed at multiple access points, not just at the entrances to the facility. Similarly, a facility operator in San Diego noted that "careful consideration needs to be taken into account for the passenger vessel industry because our vessels and facilities are not just one big secure area, but rather are interspersed amongst public areas."

Based on the substantial numbers of comments regarding the implementation of electronic TWIC inspection at passenger facilities, as well as the policy changes in this final rule, we have re-evaluated how we analyzed the costs of this rule for passenger facilities. In the TWIC pilot program, TWIC readers were typically only employed at the exterior access points to facilities, whereas in the final rule things are quite different. For passenger facilities, it is likely that electronic TWIC inspections would not likely take place at the main entrances where passengers enter and exit, as those areas would lead to "passenger access areas" which are, by definition, not secure areas and do not need to be controlled by a TWIC reader. Instead, TWIC readers or a PACS would likely be installed throughout the facility, at each entrance into a secure area, to ensure that only TWIC-holders had access to these secure areas of the facility.

Furthermore, based on the comments, we are reasonably certain that the largest passenger facilities are much more likely to implement the electronic TWIC inspection requirement by adding a biometric input method into their PACS, rather than by developing an entirely parallel TWIC reader system. This option permit substantial cost savings and operational efficiency benefits for facilities that have already invested in, as one commenter stated, "superior security."

For these reasons, we have adjusted the "number of TWIC readers" used by passenger facilities as the cost basis in our analysis. For the largest 5% of facilities, we have assumed a larger number of TWIC readers, representing our estimates that these facilities are quite extensive and will require either modification of their PACS or installation of a substantial TWIC reader system. For other passenger facilities, we have left the estimate at 2 access points per facility, for a total of four readers. We estimate that these facilities would likely have an access point to the vessel, as well as an additional access point to secure areas of the facility, such as a storage room or communications area. We develop this reasoning at more length in the accompanying regulatory analysis.

One commenter, operating several large terminals on the West Coast, provided information on the maintenance of readers. The comment estimated that they are planning to pre-purchase 74 contact card reader inserts for their 33 existing readers over the next three years at a total cost of $28,800, or approximately $300 per reader per year. We have used this information to increase our cost estimate for the maintenance of readers from 5 percent of the cost of a reader to 10 percent of the cost of a reader per year to cover the expense of insert replacements.

With regards to the number of TWIC readers, Coast Guard recognizes that there may be variability in the number of electronic readers required for any specific facility or vessel due to a large range of facility sizes, configurations, PACS types, and throughputs that will necessitate large variations in the numbers and types of TWIC access points. For the purposes of producing a cost estimate in the NPRM and RA, Coast Guard used data from Facility Security Plans (FSPs) to estimate the number of access points per facility and the TWIC pilot data to estimate an average number of TWIC readers needed per access point for a vessel or facility. The average number of TWIC readers at a vessel or facility was derived from the actual number of TWIC readers installed per facility or vessel in the pilot study that ranged from between 1 and 39 TWIC readers based on a minimum number of 1 to 24 access points from the FSPs. While we appreciate specific information about individual facilities, we note that the average figures developed through the TWIC Pilot Program, which sampled a broader spectrum of facilities, provides the best data for average numbers of TWIC readers and access points.

3. Transaction Times

Many commenters stated that conducting electronic TWIC inspection at each entry to a secure area on a day-to-day basis would negatively impact the time needed to make entries. These commenters did not, however, provide any specific information regarding transaction times. One commenter that operates a cruise ship terminal stated that conducting electronic TWIC inspection with a biometric identification component takes 20 to 30 seconds per transaction, and thus would result in intolerable delays, especially regarding baggage handlers who enter secure areas repeatedly (we would note that the RUA provisions in this final rule may offer flexibilities to mitigate transaction time concerns).

One commenter provided feedback on its TWIC reader experience. According to this commenter, the learning curve for adopting TWIC readers is short, with the proper signage and instruction. Within one year of implementing TWIC readers into the facility, the commenter had over 1 million reads that take 4 seconds each, and the use of TWIC readers on inbound trucking has caused no delays. Further, the commenter suggested that TWICs can last 3 years without breakage or delamination issues if properly cared for, and believes that many TWICs were broken because the issue of their care was not communicated. The Coast Guard agrees with some of the points made by this commenter: The learning curve for using TWIC readers is relatively short and TWIC readers can handle a large volume of reads. However, the read time may not be 4 seconds on average across all the TWIC reader users, although we appreciate the data point supplied by the commenter.

Other commenters also felt that the Coast Guard overestimated transaction times and the amount of time needed for a CCL update. With regard to the CCL update, we estimated that it would take 0.5 hours to update the CCL. One commenter suggested that the process could be automated. We agree that some operators could automate the process, but currently, we are unaware of any that do. We still believe that absent automation, our estimate of time is accurate.

Transactions were discussed by an additional commenter. One commenter stated that he had heard from an operator who has conducted over 1 million electronic TWIC transactions, and who had experienced an average transaction time of 3.5 seconds, as opposed to the 8 seconds per successful transaction experienced during the TWIC Pilot Program.

In response to comments regarding transaction times, we acknowledge that transaction times may vary based on equipment, software, environmental conditions, user familiarity, the condition of the TWIC, and perhaps many other conditions. This variability is reflected in the range of transaction times spanning from 3.5 to 30 seconds provided in the comments. The TWIC pilot collected data from a variety of facilities and circumstances, and produced an overall average of 8 seconds per transaction. We note that the range of times collected by the Pilot Program (which used TWIC readers from the ICE list) was from 6 to 27 seconds per transaction, which is not inconsistent with the experiences of the commenters.[63]

One commenter stated that the 17.1 percent failure rate from the TWIC Pilot Report is a high figure to use in the regulatory impact analysis, since the primary cause of TWIC read failures (internal antenna failures) was addressed by the design of better cards. The commenter noted that these older cards have been retired since 2009. While we believe that the design of TWICs themselves has improved, without comprehensive data demonstrating that improvement, we continue to use the 17.1 percent failure rate from the Pilot Report in our analysis as the best available estimate. This failure rate is still a reasonable one to use when estimating the delays due to TWIC reads because there are other reasons for TWIC reads to fail, such as exposure to harsh weather. Finally, we note that even this higher failure rate did not produce measureable throughput delays, and thus a lower failure rate would not substantially affect the transaction costs of this rule.

One commenter argued that between 2,500 and 3,000 people a day undergoing visual TWIC inspections would cost a great deal of money, and asked if they could use a PACS instead. Certainly nothing in this final rule precludes voluntary compliance with the requirements for electronic TWIC inspections, and the Coast Guard encourages owners and operators to go beyond minimum levels of compliance. The Coast Guard believes that this final rule will not only increase security but may also reduce the costs for owners and operators who are currently relying on visual TWIC inspection. The final rule also allows other, less expensive biometric scanners to be integrated with existing facilities' PACS, as long as a biometric TWIC read is accomplished.

4. Security Personnel

We received several comments regarding potential reductions in security personnel that could result from the mandatory use of electronic TWIC inspection. These comments generally fell into two categories. Some commenters felt that the requirements in the proposed rule, if finalized, would cause employers to reduce security staff, as fewer guards would be needed to conduct visual TWIC inspections. While some commenters believed this reduction would be a detriment to overall port security, in contrast, other commenters stated a possible reduction in personnel costs is a benefit we did not consider in the NPRM RA. We do not believe that this final rule will have a substantial effect on staffing for several reasons.

With regard to the argument that use of electronic TWIC inspection would lead to a reduction of security, we believe this results from a misunderstanding of the role of inspection and the role of security personnel. While electronic TWIC inspection can be used as a substitute for visual TWIC inspection, the role of a security guard goes far beyond this limited function, including providing other components of access control and physical security. If anything, we believe that electronic TWIC inspection can improve the capability of security personnel by allowing them to focus on their more specialized security-providing roles.

One of the reasons suggested for a reduction in staffing related to a scenario in which a vessel's crew slightly exceeded the threshold limit for an exemption from the electronic TWIC inspection requirement, and the operator of the vessel decided to reduce the crew size in order to qualify for the exemption. By clarifying that the number of crew used to determine whether the vessel is exempt is based on the minimum manning requirement in the COI, we believe that this scenario will not come to pass. Unlike a situation in which a vessel operator could dismiss an optional deckhand to qualify for the exemption, it is exceedingly difficult, if not impossible, to alter the minimum manning requirements of the vessel. Alternatively, some commenters believed that by installing TWIC readers, operators of facilities could dismiss security guards. We are not aware of any instances of operators terminating security personnel as a result of installing TWIC readers (which should have been reflected in a change to a security plan and approval by the local COTP). We also note that pursuant to PAC–D 01–11, facilities are already permitted to employ TWIC readers in lieu of visual TWIC inspection on a voluntary basis.

Some commenters felt that the proposed requirements, especially for those vessels and facilities not in Risk Group A, would increase the necessary number of security guards per shift. These comments were based on the erroneous assumptions about the use of electronic TWIC inspection with regard to vessels, as well as the mischaracterization of the requirements for electronic TWIC inspection with regard to vessels and facilities not in

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[63] See Pilot report, located in the online docket for this rulemaking at USCG–2007–28915–0121, Appendix G, pp. 49–50.

Risk Group A. We believe that the clarifications in this final rule clearly illustrate that the scenarios in which large numbers of security personnel are required on board vessels will not apply. Furthermore, access control requirements for vessels and facilities not in Risk Group A are unaffected by this final rule.

5. Other Cost Comments

Several commenters stated that the NPRM requirements were expensive. For example, one commenter stated that the expense of outfitting their vessels and facilities with TWIC readers would be enormously expensive compared to their normal operating budgets. In this particular instance, the Coast Guard notes that vessels owned by this commenter are not in Risk Group A and are not subject to the requirements in the final rule for TWIC readers. Most of these commenters did not include estimates or specific costs to support their claims. For the one commenter that provided a specific cost estimate, we incorporated the information to increase our estimate of the cost to maintain readers. The Coast Guard has carefully considered this input on burden and in this final rule has further reduced burden from the NPRM and ANPRM. See the final RA, included in the docket for this rulemaking, for the Coast Guard's analysis of the available data.

One commenter suggested that the NPRM did not appear to consider the secondary economic cost impact that would result from the disruption of such facilities from a TSI. The same commenter also stated that the break-even analysis in the NPRM did not consider the economic cost impact that would result from an attack on a petroleum facility. This latter statement is correct, because petroleum facilities are not included in the affected population of this rule. Furthermore, the former statement is correct, although the net effect of adding additional categories of terrorism impacts not now quantified in this rule would be to increase the benefits of avoiding a TSI.

Multiple commenters stated that the NPRM did not do a cost analysis of domestic inbound fleeting areas (also known as barge fleeting facilities), and that it did not fully evaluate the impact of TWIC readers on those fleets. More specifically, one of these commenters felt that owners of those fleets would have to make a significant monetary investment to install equipment in an area that might not be able to support it.

The NPRM did include all those affected domestic inbound fleeting areas in the cost analysis. It fully assessed the impact on an average facility, including the barge fleeting facilities. However, this final rule no longer specifically requires barge fleeting facilities to install TWIC reader equipment (see Section V.D.7 of this preamble), which addresses the concerns of these commenters.

One commenter said that it should not take 25 hours to update a facility security plan for TWIC. The Coast Guard disagrees. For some facilities, it may take fewer hours, but for many others it will take more than 25 hours, especially if changes to security plans are reviewed by multiple people, and we believe that the 25-hour assumption is a reasonable average for the full range of vessels and facilities impacted by this rule.

One commenter suggested that the TWIC is not designed to be handled multiple times per day, (the commenter suggested that at their passenger ferry facility, an average employee could expect to have their TWIC inspected 2,400 times per year) and therefore this rule would likely cause TWICs to degrade and malfunction at a high rate, leading to increased costs for mariners to replace degraded TWIC cards. We disagree with this analysis for two reasons. First, while some older TWICs were issued with antennas that proved unreliable, the cardstock was upgraded in 2009 to be more reliable and can be used frequently without degrading. Second, we note that at most large facilities, such as the passenger facility at issue, employees use a PACS for access control rather than the physical TWIC. This final rule permits the use of a PACS card for access control in lieu of the TWIC, so we expect that the many employees at larger facilities will not suffer any degradation of their TWICs during normal usage.

6. Costs Exceeding Benefits, Cost-Effectiveness, and Risk Reduction

Many commenters expressed a concern that the costs of installing TWIC readers on their vessels and facilities would exceed their benefits. One of these commenters said it has already implemented a superior security infrastructure and the installation of TWIC readers would be duplicative of security measures already in place. Another of these commenters expressed the view that terminal facility TWIC readers would be an unnecessary burden and cannot be justified for their operations. Another commenter felt that the added burden of the TWIC readers does not enhance overall security for their nature of operations. In addition to these commenters who questioned whether the costs of the TWIC reader rulemaking exceed the benefits, several others argued that the TWIC card readers would neither significantly enhance security on U.S. facilities and vessels, nor make our nation safer.

The Coast Guard disagrees. The regulatory impact analysis we provide in the docket discusses at length why and how security will be enhanced by this rule. The commenters do not appear to account for the benefits to the nation and its economy of avoiding TSIs or that this rule is a Congressional mandate, and therefore, it addresses a market failure in which individual owners and operators tend to under-invest in security infrastructure, equipment and operations. As previously explained, we used a risk-based approach to apply these regulatory requirements to less than 5 percent of the MTSA-regulated population, which represents approximately 80 percent of the potential consequences of a TSI. The provisions in this final rule target the highest risk entities while minimizing the overall burden of the rule. We conducted a robust alternatives analysis that considered the "break-even" point of several different alternatives and we chose the alternative that shows the final rule will be cost effective if it prevents 1 TSI with every 234.3 years. Such small changes in risk reduction strongly suggest the potential benefits of the proposed rule justify its costs.

One commenter argued that reduction of human error, as part of visual TWIC inspection, should be a quantified benefit of the final rule, and not an "unquantifiable" benefit as described in the preliminary RA. However, the commenter did not ascribe a dollar value to this benefit that could be quantified. Considering the RA did not attempt to quantify each individual security threat mitigated, but instead provided an overall break-even analysis that encompassed the rule, we believe our analysis remains appropriate for this issue.

7. Cumulative Costs of Security-Related Rulemakings

Some commenters warned of the cumulative economic impacts of this rulemaking with several other finalized rules across Federal agencies. These comments did not provide specific data or information on these cumulative economic impacts. Understanding and considering the concerns about these cumulative economic impacts of all maritime security regulations, the Coast Guard decided to apply the final rule to a smaller population of MTSA-regulated entities after conducting its regulatory impact analysis. The Coast Guard believes that the increased flexibility of the final rule compared to the proposed regulations will help lower costs and ease the burden on the regulated stakeholders.

8. Small Business Impact

One commenter expressed concern that its small profit margin would be negatively affected by new expenses for security due to changes to technology and additional regulations. Cognizant of regulatory impacts on small businesses, the Coast Guard sought to minimize these impacts by allowing businesses to integrate TWIC readers into their existing PACS, and to choose from a variety of biometric scanners that may cost less than those approved by the TSA and listed on the TSA's QTL.

F. Other Issues

1. The GAO Report and the TWIC Pilot Program

Several commenters noted concerns with the final rule in light of the May 2013 GAO report "Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed" (GAO–13–198). Two commenters specifically called attention to the GAO report's suggestion that results were less reliable due to ineffective evaluation design and the lack of requisite data. The Coast Guard fundamentally disagrees with the statement. Although there were many challenges in the implementation of the TWIC reader pilot, considerable data were obtained in sufficient quantity and quality to support the general findings and conclusions of the TWIC reader Pilot Report. The pilot obtained sufficient data to evaluate TWIC reader performance and assess the impact of using TWIC readers at maritime facilities. Furthermore, the Coast Guard supplemented the information from the TWIC Pilot Program with other sources of information. For example, in the RA, the Coast Guard estimated the number of access points per facility by facility type through the use of an independent data source (Facility Security Plans), and estimated the costs of TWIC readers through published pricing information. This independent data supplemented what we learned through the pilot and helped account for TWIC reader implementation at all access points when developing the NPRM.

Similarly, multiple commenters suggested that the Coast Guard should not move forward on this final rule due to the GAO recommendations. We would encourage those who criticize the TWIC Pilot Program to closely review how the information gained in the program was used in the development of this rulemaking. Because of the testing conditions endemic to a voluntary pilot program, the TWIC Pilot Program encountered many challenges. The Coast Guard was aware of the pilot's limitations, and used it with discretion in developing the NPRM and, subsequently, in developing this final rule. For that reason, the pilot results were not the sole basis for the NPRM. The Coast Guard believes that the pilot produced valuable information concerning the environmental, operational, and fiscal impacts of the use of TWIC readers. The Coast Guard believes that data were obtained in sufficient quantity and quality to support the general findings and conclusions of the Pilot Report. The pilot data informed aspects of the rulemaking in which no other data were available. The Coast Guard is convinced that TWIC, including the use of biometric readers, can and should be a part of the nation's maritime security system, for the reasons cited extensively in this final rule.

Two commenters suggested that individual TWIC Pilot Program participants were not provided the opportunity to review the final draft Pilot Report prior to publication. In response, the Coast Guard participated along with TSA and the independent test agent in individual close-out meetings with each of the pilot participants. Individual test phase reports were provided to participants in advance of those meetings to verify and answer questions and concerns.

One commenter suggested that they heard from participants that information contained in the Pilot Report was inconsistent with the participants' records. We note that this commenter was not a pilot participant, nor did we receive such feedback from pilot participants. Given the nature of the program, we believe that the information from the pilot was generally helpful in providing data relating to certain operational aspects of the TWIC program.

The RA for this final rule accounts for maintenance, replacement, and operation costs of TWIC readers in addition to the costs reported in the Pilot Report, contrary to the GAO's assertions. As both the Pilot Report and the GAO's review note, not all facilities implemented TWIC readers at all access points during the pilot in the same way they may have to do in the future to meet the requirements of this final rule. We believe that the immaturity of TWIC reader technology at the onset of the pilot, the voluntary nature of the Pilot Program, and lack of full cooperation at all facilities were major contributors to the pilot's limitations. Furthermore, we note that the additional flexibility afforded by this final rule, especially with regard to utilizing PACS as a means to undertake electronic TWIC inspection, will further reduce the negative operational impacts of the TWIC requirement that were experienced by some participants during the pilot.

One commenter took the opposite position, arguing that the GAO report went beyond the required purpose of assessing the validity of the pilot, and that TWIC reader technology could be seamlessly integrated into their facility access control systems. While we do acknowledge that there were some problems with the pilot, overall we agree with the commenter that it demonstrated the ability to integrate TWIC into access control systems at a wide range of maritime facilities.

One commenter suggested that the Coast Guard does not have an accurate accounting of how long it will take to resolve TWIC reader issues. We addressed a similar comment in the section of this preamble regarding malfunctioning access control systems. Per that discussion, we note that in this final rule, we are removing the specific time period for repairs, and that restoration of an access control system will be handled in accordance with the procedures for the reporting requirements for non-compliance as described in 33 CFR 104.125, 105.125, and 106.125. These sections require the owner or operator to notify the cognizant COTP, and to either suspend operations or request and receive permission from the COTP to continue operating.

Additionally, one commenter stated that the NPRM did not address the error rate experienced during the Pilot Program which, with repetitive failure, created distraction, confusion, and complacency with an overall degradation of security. The commenter suggested that another pilot should have been conducted to validate the original findings given technology problems encountered. The Coast Guard disagrees. The RA section in the NPRM did address error rates as potential opportunity costs associated with delays as a result of TWIC reader requirements. Furthermore, the Pilot Report did acknowledge both TWIC reader errors and card failures as challenges that were faced. The Coast Guard believes that the combination of technology advancement since the Pilot Program started and the enhanced flexibility and the movement to a more performance-based standard in this final rule will have a significant role in reducing the rate of TWIC reader failure and the overall effect of TWIC reader failure on a vessel or facility. As noted in the NPRM, the Coast Guard anticipates that the rate of card failure requiring replacement will decrease as TWIC reader use increases. We believe the number of unreadable TWICs initially identified will decrease as the increased use of TWIC readers will enhance TWIC validity and readability by identifying damaged TWICs. However, as with any such critical system and as we have noted in previous sections, it is important for operators of vessels and facilities affected by this final rule to adequately address potential electronic reader failure scenarios in the development of their security plans to ensure that measures are identified, and to seamlessly react to a single electronic reader failure or, in the worst case, an entire PACS failure in a way that continues to meet the security intent of this rulemaking. Please see discussion in section V.B.3.d on malfunctioning access control systems for more discussion on this subject.

One commenter highlighted GAO's assertion that DHS has not yet adequately demonstrated how the TWIC actually enhances maritime security. We have addressed the efficacy of the TWIC program as a whole in Section V.A of this preamble.

One commenter stated that the GAO report failed to account for the opinions of various container terminal operators that participated in the Pilot Program, and suggested that the GAO report itself was flawed and went beyond its mandate. The Coast Guard appreciates the extremely valuable information provided by all vessel and facility operators during the course of this rulemaking, and has evaluated all comments in comparison with economic and environmental data to enhance this final rule to address the greatest security threats in which TWIC and TWIC readers provide utility in the prevention of a TSI. We have modified this final rule in a manner that allows for the greatest flexibility for non-Risk Group A vessel and facility operators to implement electronic TWIC inspection procedures on a voluntary basis. Additionally, the Coast Guard is committed to the continued security of the nation's ports. Accordingly, we will continue to evaluate the need for TWIC readers on vessels or facilities not covered in this final rule, and, should future cost benefit analysis show increased TWIC reader cost-effectiveness to address the threats to vessels and facilities within our ports, we may propose further requirements.

Several commenters suggested that the Coast Guard did not engage with industry groups and advisory committees, other than TSAC, when drafting this rulemaking. The Coast Guard took into consideration input from a wide range of industry representatives during the development of this final rule through both formal and informal interaction. Formal interaction with stakeholders occurred in the form of direct contact with the National Maritime Security Advisory Committee, interaction with TWIC Pilot Program participants, and during multiple port and facility visits aimed at gathering specific feedback from industry on TWIC and the use of TWIC readers. Informal interaction occurred through multiple TWIC information sessions at industry-sponsored events such as meetings and conferences, and through feedback in the form of comments to both the ANPRM and NPRM for this rulemaking.

2. Additional Comments

a. General Comments on the TWIC Program

Many commenters supported the Coast Guard's implementation of a delayed effective date for this final rule. As stated in the **DATES** section above, the Coast Guard will delay the effective date of this rulemaking by 2 years to allow the regulated industries time to comply with this final rule. One commenter asked if a non-Risk Group A vessel or facility decided, 1 year from the date of publication, to move up to Risk Group A, how many years that entity would have to comply with this final rule. In this example, the entity would have 1 more year to comply with the electronic TWIC inspection requirements of this final rule. All vessels and facilities meeting the Risk Group A criteria after the effective date of this final rule will have no extra time to comply, as the regulation will be in force. The commenter also asked what procedures such a facility would have to follow. Such a facility would have to adjust its FSP in accordance with all applicable regulations, and then implement the requirements of the approved FSP.

Some commenters expressed concerns about the durability and reliability of TWICs themselves. As revealed in the TWIC Pilot Program, many users experienced problems with the TWIC. We note, as multiple commenters did, that prior to 2009, some cards were issued with antennas that experienced high rates of failure, but given the 5-year expiration period of the TWIC, those cards should all be replaced by the time this final rule is effective. Furthermore, due to the flexibility added by this final rule, should an environment prove to have a negative effect on the TWIC, owners and operators can use one of the alternative means described above to provide for access control while keeping TWICs in a secure location where they will not become damaged.

One commenter stated that mariners are already subject to background checks, which should preclude the need for another check conducted by an electronic reader. We would note that the electronic TWIC inspection does not actually conduct an additional background check, but merely verifies the individual presenting the card is the same person who underwent the original background check. This commenter also suggested that random Coast Guard checks of the TWIC ensure adequate security. We disagree, and believe that security validation at high-risk vessels and facilities should be conducted thoroughly, not occasionally, for the reasons described in this rule.

One commenter in a public meeting suggested that because of the TWIC program, driver's licenses and other forms of identification are no longer allowed for access to facilities, in favor of a TWIC, and that this has reduced security. The Coast Guard disagrees, and believes that TWIC enhances security. We note, for example, that merely having a driver's license does not indicate that an individual has passed a background check.

Some commenters discussed both possible TSIs and terrorist attacks which would not, in their view, have been averted by a TWIC reader requirement. The Coast Guard notes that the electronic TWIC inspection requirements are only part of the Coast Guard's comprehensive port security program and will not address all attack scenarios. Issues relating to the overall effectiveness of the electronic TWIC inspection programs are discussed in Section V.A, above.

Some commenters supported the use of the TWIC as a single Federal credential, and suggested that it should preempt and supersede other State, local, or site-specific credentials. One commenter suggested that using the TWIC as the only credential a person would need to enter multiple secure facilities would have substantial economic benefits, especially for individuals such as truck or bus drivers that need to access many different secure facilities. These benefits, according to the commenter, would include conducting only a single background check (as opposed to multiple background checks that might be needed to obtain State, local, and site-specific credentials), as well as reduced "wait time" as security credentials are examined.

While there is an efficiency argument to having a single, nationwide credential, we believe that the disbenefits of such a mandatory program are substantial and outweigh that efficiency. To start, we note that part of the increased flexibility of this final rule allows for alternative cards, such as employee ID cards, to achieve electronic TWIC inspection, provided that these cards are linked to a TWIC in a manner described above. As several commenters noted, possession of an authorized TWIC should not, in and of itself, grant the TWIC-holder access to any secure area on any vessel or facility. While a valid TWIC is a necessary component for unescorted access to secure areas, it will not be the sole reason, as owners and operators must exercise their right and responsibility to decide to whom to provide such access.

One commenter expressed concern regarding the tiered approach for the use of TWIC readers. This commenter suggested that multiple access control procedures could result in confusion for persons who visit many different facilities. The commenter proposed that the Coast Guard require the installation of TWIC readers at Risk Group A and B facilities, and require that Risk Group C facilities maintain portable TWIC Readers. We acknowledge that using different access procedures at different facilities could be confusing. Furthermore, for the reasons discussed extensively, we do not believe that requiring electronic TWIC inspection at non-Risk Group A facilities is an effective use of resources at this time.

Two commenters suggested an alternative process where inspection requirements are relaxed during peak hours. One commenter stated that between 7 a.m. and 9 a.m., hundreds of vehicles enter a particular facility, often with multiple passengers, and that requiring biometric identification of each passenger could result in traffic delays. The commenter suggested that only the driver should be required to undergo electronic TWIC inspection, while the passengers could present their TWICs for visual TWIC inspection. The Coast Guard does not agree with this approach, as it creates a fairly obvious and exploitable gap in security.

While we have worked to increase operator flexibility to reduce delays and minimize their effects, we have estimated in the Coast Guard's RA that some facilities may have to make modifications to business operations to accommodate electronic TWIC inspection requirements, such as increasing the number of access points for vehicles. Furthermore, it may be possible at some facilities to conduct electronic TWIC inspections at locations employees would walk through after disembarking from their automobiles.

Several commenters considered existing requirements under the MTSA and/or under the International Ship and Port Security Code to be sufficient for themselves and others, and that electronic TWIC inspection requirements should not apply to them. We believe, for reasons extensively detailed in this document, that the statutorily-mandated enhancements to access control in this final rule have been applied to the class of vessels and facilities to which they are most cost-beneficial.

One commenter was concerned at the prospect of TWIC readers being considered "no-sail equipment," that is, equipment which must be operational before a vessel can leave. We note that while a situation where a TWIC reader could become no-sail equipment theoretically exists (for example, if there were only one TWIC reader available on the vessel, no TWIC readers at the facility, and no portable TWIC readers available), we have elaborated on the many ways in which this could be avoided through advance planning. This final rule elaborates on procedures which would be acceptable in the event of an electronic reader or system failure. We would recommend that operators of vessels or facilities required to undertake electronic TWIC inspections utilize robust systems that are capable of withstanding a single point of failure.

One commenter expressed confusion as to how the electronic TWIC inspection requirement would apply to the aviation industry. We note that the requirement for electronic TWIC inspection at Risk Group A vessels and facilities applies equally to individuals entering via helicopters or other airborne means. In such an instance, it would be the responsibility of the owner or operator to conduct electronic TWIC inspections to ensure that all persons granted unescorted access to secure areas within the facility or upon boarding the vessel possess a valid TWIC.

One commenter in a public meeting suggested that multiple entrances and departures in a day may pose a safety risk, if for example a facility is surrounded by public roads and highways. We believe that businesses can design their access points to secure areas in such a way that mitigates traffic impacts and potential safety concerns regarding public roads. We note that with the requirement for electronic TWIC inspection prior to each entry into a secure area of the facility, the security risk of such an environment would be greatly mitigated compared to a system that only required, for example, one inspection per day.

One commenter requested that the TWIC be used as a universal identification card for entrance to transportation facilities, replacing the issuance of State, county, and facility-specific credentials. The commenter also suggested that bus and motorcoach drivers should be eligible for TWICs. Noting that many drivers travel to numerous MTSA-regulated sites, the commenter argued that using the TWIC exclusively could significantly reduce the costs and other burden associated with the need for multiple security credentials. While we do not dispute the efficiency argument, we are not requiring the use of a TWIC as universal identification card for a number of reasons. First, again, this suggestion is out of scope of the rulemaking, which is limited to the requirement for electronic TWIC inspections. Moreover, we note that nearly all MTSA-regulated facilities restrict access not only to those who have a TWIC, but also to those who have a valid reason to be on the premises. As many commenters repeated, simply having a TWIC does not guarantee access to a secure area of a vessel or facility. Many vessels and facilities use employment-specific identification cards both as a means to ensure that a person has been vetted as well as a means to show that they are employees. Furthermore, some of these PACS cards are used to track employee locations or restrict access within the facility. Requiring all facilities to use the TWIC exclusively could negatively impact security and business operations by removing the benefits of facility-specific access cards.

Several commenters encouraged the Coast Guard to dismiss or devalue the comments from other commenters. In accordance with the Administrative Procedure Act, the Coast Guard considered every comment it received, both through the docket and through public meetings, before issuing this final rule.

Several commenters made statements asserting that their operations were more secure or employees better trained than public transit operations and employees, and yet the latter may not be required to perform electronic TWIC inspections. While we cannot attest to the validity of these statements, we continue to believe that the improved security of electronic TWIC inspection, compared to visual TWIC inspection, is warranted for high-risk vessels and facilities for the reasons discussed extensively in this preamble.

One commenter believed that disbanding the TWIC program would remove the "false crutch that TWIC provides" and encourage greater operational security. For the reasons discussed above, we disagree and believe that TWIC provides a necessary and effective element of a comprehensive security system.

b. Clarification of Specific Items

Several commenters asked for clarification about a term or idea used in the NPRM, or asked the Coast Guard to define it outright. Explanations of various terms are described below.

One commenter requested clarification of the term "each entry." As stated above, with regard to facilities, "each entry" is each distinct transition from a non-secure area to a secure area. With regard to vessels, "each entry" is each distinct transition from a non-secure area prior to boarding the vessel.

One commenter asked about the definition of "escorting," specifically whether a visual inspection, such as the use of closed-circuit television (CCTV) systems, would be an acceptable form of escorting. In response, we refer the commenter to the detailed guidance on escorting found in NVIC 03–07. There, we provide guidance and examples of circumstances in which the use of surveillance equipment, including CCTV systems, might be sufficient for escorting purposes. The specific facts and circumstances of each case will determine whether the Coast Guard will permit CCTV systems for such purposes. In general, escorting in restricted areas requires side-by-side accompaniment with a TWIC-holder. However, escorting in secure areas that are not also designated restricted areas does not always require side-by-side accompaniment. In such secure, non-restricted areas, escorting may be sufficient through CCTV or other monitoring method (*see* 33 CFR 104.285 and 105.275). Where such monitoring is appropriate, the general principle applies that monitoring must enable sufficient observation of the individual with a means to respond if the individual is observed to be engaging in unauthorized activities or crossing into an unauthorized area.

One commenter raised the issue of how railroads would interact with the new electronic TWIC inspection requirements. PAC 05–08, "TWIC Requirements and Rail Access into Secure Areas," is the existing policy guidance regarding railroad access as it relates to facilities in the TWIC program. This guidance allows the railroad company's local or regional scheduling coordinator to provide information on the TWIC status of the crew, and if all crewmembers are valid TWIC-holders, allows them to enter the secure area of a MTSA-regulated facility without further inspection of their TWICs. PAC 05–08 also permits trains on "continuous passage" through a facility to proceed without stopping to check TWICs in certain circumstances. One commenter, representing railroad companies, stated "[n]either the need for, nor the advisability of, a change has been demonstrated" in regards to this guidance. We agree, and reaffirm the guidance in PAC 05–08 in this final rule, with one caveat. If PAC 05–08 would require that an individual's TWIC be checked at a Risk Group A facility, it must be checked using electronic TWIC inspection.

c. Comments Outside the Scope of This Rulemaking

Many commenters provided comments beyond the scope of this rulemaking when discussing the TWIC program generally. In addition to concerns about card stock and card reliability, comments concerning applicability of the TWIC card to other U.S. government or government-regulated facilities, TWIC card applications, delays in issuing or renewing TWIC cards, and those concerning TWIC card waivers are all beyond the scope of this rulemaking. Similarly, it is beyond the scope of this rulemaking to require biometrics in the U.S. Merchant Mariners Document, commonly known as a "Z-Card," or for multiple mariner documents to be consolidated into an "all-in-one" credential. The scope of this rulemaking is to establish requirements for electronic TWIC inspections on vessels and facilities regulated under the MTSA.

Several commenters suggested ideas about how TSA's CCL could be improved or altered. We note that these ideas are outside the scope of this rulemaking and are best addressed to the TSA.

Some commenters expressed concerns with the background check criteria for receiving a TWIC. For example, one commenter noted that certain longshore workers were erroneously denied a TWIC based on incorrect information in the Federal Bureau of Investigation database, and another experienced difficulty proving citizenship because he was born on a military base. While we are aware that some challenges exist in the enrollment and application process, we believe that the vast majority of enrollments are conducted accurately and efficiently, and that problems are generally dealt with in a courteous and timely manner. We note, however, that concerns relating to the background check are outside the scope of this rulemaking.

One commenter expressed concern that no regulatory analysis was done for workers who need to acquire and pay for a TWIC. Another commenter stated that for workers in remote areas, the cost of obtaining a TWIC can be higher due to travel costs. We note that this final rule does not require any additional individuals to acquire a TWIC, and thus the comment is outside the scope of this rulemaking. However, we would refer interested parties to the RA for the TWIC final rule, available at *http://www.regulations.gov,* docket number TSA–2006–24191–0745, for a detailed analysis of these costs.

One commenter expressed concern that there is no requirement in this rule that obligates an employer to report individual TWIC-holders to the Coast Guard who commit TWIC-disqualifying offenses. This issue is outside the scope of this rulemaking.

One commenter criticized facility owners for poor quality fences despite receiving money from the Federal government to improve security. This commenter also suggested that instead of investing funds into the TWIC readers, the Coast Guard should spend the money on bettering terminals and their surrounding areas. These comments do not address the use of electronic TWIC inspection, and therefore, are out of this rule's scope.

One commenter in a public meeting described a system where "personnel from other companies" must, prior to arrival at his facility, fax his company with basic information including whether or not the visitor holds a TWIC. Facility procedures other than those relating to the electronic TWIC inspection procedures are beyond the scope of this rulemaking.

One commenter recommended using closed-circuit television systems for purposes of visual inspection, rather than having a guard physically present. This rule relates to electronic TWIC inspection, and we do not believe it is within the scope of this rulemaking to issue guidance on proper visual identification procedures.

One commenter suggested that, if not requiring electronic TWIC inspection for all Risk Groups, the Coast Guard should institute a "display and challenge" requirement for all secure areas. This would require that all persons with unescorted access display their TWIC or other credential when in a secure area. As this final rule only relates to electronic TWIC inspection, such a suggestion is out of scope of this rulemaking.

One commenter suggested that the Coast Guard has been lax in pursuing administrative action for TWIC-related offenses, such as loaning TWICs, entering facilities without undergoing proper screening processes, or using counterfeit TWICs. We note that these issues are taken seriously, but are outside the scope of this rulemaking as we are not changing the actions to be taken upon identification of TWIC issues, merely how they might be detected.

One commenter noted that "terminals must abide by common law and practice," in reference to the idea that TWICs are not the sole condition of entry. The Coast Guard agrees, but notes the improvement in access control that electronic TWIC inspection provides.

One commenter implied that ammonium nitrate should not be considered CDC. Altering the list of CDC (defined in 33 CFR part 160) is beyond the scope of this rulemaking.

One commenter noted that visual TWIC inspection presents a safety issue, as security personnel can be injured or killed by vehicles approaching the gate area. While there are certainly security incidents where attackers can try to use force to breach the perimeter of a secure facility, such incidents are beyond the scope of this rule.

One commenter suggested that the U.S. Congress should fully fund the TWIC reader program, and asserted that funding of Federally mandated programs will ensure a degree of financial relief and minimize burdens. While we agree that funding would shift the industry burden to taxpayers, this comment remains beyond the scope of this rule.

Finally, this final rule makes a number of minor, technical edits, including updating internal references, to the regulations in 33 CFR Chapter I, Subchapter H, in addition to the changes discussed elsewhere in the preamble. These edits affect the following sections in Title 33 of the CFR:

- 101.105 Definitions.
- 101.514 TWIC Requirement.
- 101.515 TWIC/Personal Identification.
- 104.105 Applicability.
- 104.115 Compliance.
- 104.120 Compliance documentation.
- 104.200 Owner or operator.
- 104.215 Vessel Security Officer (VSO).
- 104.235 Vessel recordkeeping requirements.
- 104.260 Security systems and equipment maintenance.
- 104.267 Security measures for newly hired employees.
- 104.292 Additional requirements—passenger vessels and ferries.
- 104.405 Format of the Vessel Security Plan (VSP).
- 104.410 Submission and approval.
- 105.115 Compliance dates.
- 105.120 Compliance documentation.
- 105.200 Owner or operator.
- 105.257 Security measures for newly hired employees.
- 105.290 Additional requirements—cruise ship terminals.
- 105.296 Additional requirements—barge fleeting facilities.
- 105.405 Format and content of the Facility Security Plan (FSP).
- 105.410 Submission and approval.
- 106.110 Compliance dates.
- 106.115 Compliance documentation.
- 106.200 Owner or operator.
- 106.262 Security measures for newly-hired employees.
- 106.405 Format and content of the Facility Security Plan (FSP).
- 106.410 Submission and approval.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is a significant regulatory action under section 3(f) of E.O. 12866. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. A final assessment is available in the docket, and a summary follows.

We amend our regulations on certain MTSA-regulated vessels and facilities to include requirements for electronic TWIC inspection to be used for access control for unescorted access to secure areas.

Table 3 summarizes the costs and benefits of this final rule.

TABLE 3—SUMMARY OF COSTS AND BENEFITS [64]

Category	Final rule
Applicability	High-risk MTSA-regulated facilities and high risk MTSA-regulated vessels with greater than 20 TWIC-holding crew.
Affected Population	1 vessel. 525 facilities.
Costs ($ millions, 7% discount rate)	$21.9 (annualized). $153.8 (10-year).
Costs (Qualitative)	Time to retrieve or replace lost PINs for use with TWICs.
Benefits (Qualitative)	Enhanced access control and security at U.S. maritime facilities and on board U.S.-flagged vessels. Reduction of human error when checking identification and manning access points.

Table 4 summarizes the changes in the regulatory analysis as we moved from the NPRM to this final rule. These changes to the RA came from either policy changes on the electronic TWIC inspection requirements, public comments received after the publication of the NPRM in March 2013, or simply from updating the data and information that informed our regulatory analysis.

TABLE 4—CHANGES IN REGULATORY ANALYSIS FROM NPRM TO FINAL RULE

Element of regulatory analysis	Reason changed	Explanation of change
Affected Population	Policy change	a. Barge fleeting facilities were removed reducing the previous facility population of 532 to 525, and b. Crew size changed to 20 (instead of 14) and thus reducing the number of vessels to 1.
Cost of TWIC Readers	Update to reflect current prices for TWIC readers.	The most recent prices of electronic TWIC readers as published in GSA schedule and TSA's QTL were significantly reduced.
	Comments received	Some public comments suggested that TWIC reader costs have declined since the NPRM RA data was collected.
Wages for transportation workers ...	More current BLS data	Revised labor cost by using May 2012 BLS data.
Maintenance Cost of TWIC Readers.	Comment received	Revised this cost assumption from 5% of the total cost of a TWIC Reader to 10%.
Number of TWIC Readers	Comment received	Per one large ferry passenger facility's suggestion, accommodated this facility's higher number of readers in cost estimates.

In this final rule, we require owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H, to use electronic TWIC inspection designed to work with TWIC as an access control measure. This final rule also includes recordkeeping requirements for those owners and operators required to use an electronic TWIC inspection, and amendments to security plans previously approved by the Coast Guard to incorporate TWIC requirements.

The provisions in this final rule enhance the security of vessels, ports, and other facilities by ensuring that only individuals who hold valid TWICs are granted unescorted access to secure areas at those locations. It will also further implement the MTSA transportation security card requirement, as well as the SAFE Port Act electronic TWIC inspection requirements.

We estimate that this final rule would specifically affect owners and operators of certain MTSA-regulated vessels and facilities in Risk Group A with additional costs. As previously discussed, Risk Group A would consist of those vessels and facilities with highest consequence for a TSI. Affected facilities in Risk Group A would include: (1) Facilities, including barge fleeting facilities, that handle or receive vessels carrying CDC in bulk; and (2) Facilities that receive vessels certificated to carry more than 1,000 passengers. Affected vessels in Risk Group A would include: (1) Vessels that carry CDC in bulk; (2) Vessels certificated to carry more than 1,000 passengers; and (3) Towing vessels engaged in towing barges subject to (1) or (2). In addition, this proposal provides an electronic TWIC inspection exemption for vessels with 20 or fewer TWIC-holding crewmembers, further reducing the number of affected vessels in Risk Group A.

Based on the risk-based hierarchy described in the preamble of this final rule and data from the Coast Guard's MISLE database, we estimate this final rule will affect 525 facilities and 1 vessel with additional costs. All of these facilities and vessels are in Risk Group A.

The final rule adds flexibility in using existing PACS to comply with the electronic TWIC inspection requirements, which may result in lower costs for affected facilities and vessels. For the purposes of regulatory analysis, however, we prepare the cost estimate assuming that all of the affected population will install and use electronic TWIC readers. The following discussion of the cost analysis is based on this assumption.

To estimate the costs for this proposal, we use data from a variety of sources, including MISLE, TWIC Pilot Study, TSA's ICE and QTL lists, public comments, and the GSA schedule among others. When data from the TWIC pilot are used (to estimate the costs for installation, integration, and PACS integration), the data are broken down by per electronic reader cost for each facility type. By distilling the costs from the TWIC Pilot down to a per TWIC reader cost by facility type, we are able to smooth out the varied costs in the TWIC Pilot and effectively normalize the TWIC Pilot costs before applying the costs to the full affected population of this rulemaking.

The primary cost driver for this final rule is the capital cost associated with the purchase and installation of TWIC readers into access control systems. These costs include the cost of TWIC reader hardware and software, as well as costs associated with the installation, infrastructure, and integration with a PACS. Operational costs associated with this rulemaking include security plan amendments, recordkeeping, updates of the list of cancelled TWICs, training, and system maintenance. We also include operational and maintenance costs, which we estimate to be five percent of the cost of the TWIC reader hardware and software and are incurred annually. Table 5 summarizes our estimates for total capital costs by facility type during the 2-year implementation period; Table 6 provides the operational costs for facilities by four requirements throughout the analysis period.[65]

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[64] For a more detailed discussion of costs and benefits, see the full RA available in the online docket for this rulemaking. Appendix G of that document outlines the costs by provision and also discusses the complementary nature of the provisions and the subsequent difficulty in distinguishing independent benefits from individual provisions.

[65] See RA Tables 4.10 and 4.16 and associated discussion for the specific sources for our estimates as well as how they were developed.

TABLE 5—TOTAL FACILITY CAPITAL COSTS, 2-YEAR IMPLEMENTATION PERIOD (YEAR 1 AND YEAR 2)

Facility type	Number	Total readers		Total reader costs ($)		Total costs ($)			Total capital cost ($)
		Fixed	Portable	Fixed	Portable	Install.	Infra-structure	PACS	
Bulk Liquid ...	290	1,535	292	8,247,555	2,054,220	11,475,387	20,033,055	15,279,201	57,089,418
Break Bulk and Solids	16	91	45	488,943	316,575	904,128	3,724,904	2,938,552	8,373,102
Container	3	36	8	193,428	56,280	909,612	589,952	1,020,184	2,769,456
Large Passenger	92	42	524	225,666	3,686,340	1,682,152	4,102,368	841,642	10,538,168
Small Passenger	63	0	426	0	2,996,910	0	0	0	2,996,910
Mixed Use	61	180	72	967,140	506,520	8,191,008	6,300,000	1,242,108	17,206,776
Total	525	1,884	1,367	10,122,732	9,616,845	23,162,287	34,750,279	21,321,687	98,973,830

TABLE 6—ANNUAL OPERATIONAL COSTS FOR FACILITIES

Years after publication	Amendments	Recordkeeping	Canceled card list	Training		Total
				Personnel	FSO	
1	$467,614	$748,182	$486,319	$209,219	$74,676	$1,986,009
2	465,836	857,138	484,469	261,523	93,345	2,162,312
3	0	224,028	970,788	104,609	37,338	1,336,763
4	0	224,028	970,788	104,609	37,338	1,336,763
5	0	224,028	970,788	104,609	37,338	1,336,763
6	0	224,028	970,788	104,609	37,338	1,336,763
7	0	224,028	970,788	104,609	37,338	1,336,763
8	0	224,028	970,788	104,609	37,338	1,336,763
9	0	224,028	970,788	104,609	37,338	1,336,763
10	0	224,028	970,788	104,609	37,338	1,336,763
Total	933,450	3,397,544	8,737,092	1,307,616	466,725	14,842,427

Table 7 shows the 10-year period of analysis for the total costs by facility type. These facility costs do not include costs associated with delays or replacement of TWICs, which are discussed later. These estimates include capital replacement costs for TWIC reader hardware and software beginning 5 years after implementation. These costs are reduced from those estimated in the NPRM given cost reductions in TWIC readers and the removal of TWIC reader requirements for barge fleeting areas.

TABLE 7—10-YEAR TOTAL COSTS, BY FACILITY TYPE*

[$ Millions]

Year	Bulk liquid	Break bulk and solids	Container	Large passenger	Small passenger	Mixed use	Total
1	$31.6	$2.4	$0.8	$9.8	$7.4	$4.4	$56.3
2	32.3	2.4	0.8	10.0	7.5	4.5	57.4
3	4.6	0.3	0.1	1.4	1.1	0.6	8.1
4	4.6	0.3	0.1	1.4	1.1	0.6	8.1
5	4.6	0.3	0.1	1.4	1.1	0.6	8.1
6	10.1	0.8	0.2	3.1	2.4	1.4	18.0
7	10.1	0.8	0.2	3.1	2.4	1.4	18.0
8	4.6	0.3	0.1	1.4	1.1	0.6	8.1
9	4.6	0.3	0.1	1.4	1.1	0.6	8.1
10	4.6	0.3	0.1	1.4	1.1	0.6	8.1
Total Undiscounted	111.5	8.3	2.7	34.5	26.0	15.4	198.3
Total Discounted at 7%	88.7	6.6	2.1	27.5	20.7	12.2	157.8
Total Discounted at 3%	100.4	7.5	2.4	31.1	23.4	13.9	178.7

Note: Numbers may not total due to rounding.

*These facilities are regulated because they handle CDC or more than 1,000 passengers. In the U.S. marine transportation system, facilities often handle a variety of commodities and provide a variety of commercial services. These facility types have different costs based on physical characteristics, such as the number of access points that would require TWIC readers, and other data received from the TWIC Pilot Study. See the final RA for details on different facility types and data from the TWIC Pilot Study.

To account for potential opportunity costs associated with the delays as a result of the electronic TWIC inspection requirements, we estimate a cost associated with failed reads.[66] We provide a range of delay costs based on different delays in seconds and also based on the number of times a TWIC-holder may have their card read on a weekly basis. By using a range of delay costs, we are able to account for multiple scenarios where an invalid electronic TWIC inspection transaction would lead to the use of a secondary processing operation, such as a visual TWIC inspection, additional identification validation, or other provisions as set forth in the FSP.[67]

Table 8 provides the annual costs associated with delays caused by invalid transactions for Risk Group A Facilities.

TABLE 8—COST OF DELAYS DUE TO INVALID TRANSACTION PER YEAR, FOR RISK GROUP A FACILITIES

	1 Read per week	2 Reads per week	3 Reads per week	4 Reads per week	5 Reads per week	Average
6 Seconds	$94,339	$188,678	$283,017	$377,356	$471,696	$283,017
14 Seconds	220,125	440,249	660,374	880,498	1,100,623	660,374
30 Seconds	471,696	943,391	1,415,087	1,886,782	2,358,478	1,415,087
60 Seconds	943,391	1,886,782	2,830,173	3,773,564	4,716,955	2,830,173
120 Seconds	1,886,782	3,773,564	5,660,346	7,547,129	9,433,911	5,660,346
Average	723,266	1,446,533	2,169,799	2,893,066	3,616,332	2,169,799

For the purposes of this analysis, we used the cost of delay estimate of $2.2 million per year, which represents the average delay across all iterations of delay times and electronic TWIC inspection transactions.

The use of TWIC readers will also increase the likelihood of faulty TWICs (TWICs that are not machine readable) being identified and the need for secondary screening procedures so affected workers and operators can address these issues.[68] If a TWIC-holder's card is faulty and cannot be read, the TWIC-holder would need to travel to a TWIC Enrollment Center to get a replacement TWIC, which may result in additional travel and replacement costs. To account for this, we estimate a cost for a percentage of TWIC-holders to obtain replacement TWICs.

Based on information from the TWIC Pilot, we estimate that each year approximately five percent of TWIC-holders associated with Risk Group A would need to replace TWICs that cannot be read. We estimate that this would cost approximately $254.93 per TWIC-holder to travel to a TWIC Enrollment center and get a replacement TWIC.[69] Overall, we estimate that TWIC replacement would cost approximately $2.3 million per year for TWIC transactions involving Risk Group A facilities. We assume this is an annual cost, though we anticipate that the rate of TWIC replacements will decrease as TWIC reader use increases, since the number of unreadable TWICs initially identified will decrease as the regular use of TWIC readers will serve to enhance TWIC validity and readability.

Table 9 shows the average initial phase-in and annual recurring costs per facility by facility type. This includes capital, operational, delay, and TWIC replacement costs due to invalid TWIC reader transactions. It does not, however, account for vessel costs.

TABLE 9—PER FACILITY COST, BY FACILITY TYPE

Phase-in & recurring costs	Bulk liquid	Break bulk and solids	Container	Large passenger	Small passenger	Mixed use
Initial Phase-in Cost	$107,907	$145,588	$251,211	$105,375	$115,818	$ 70,758
Annual Recurring Cost	14,575	19,664	33,931	14,233	15,643	9,557
Annual Recurring Cost *with* Equipment Replacement	33,701	45,470	78,457	32,910	36,172	22,099

For the single Risk Group A vessel with greater than 20 TWIC-holding crewmembers, we assume that this vessel will comply with the requirements by purchasing two portable TWIC readers (total first year cost of $14,070) and deploying them at the main access points of the vessel, replacing them at Year 6. We also estimate $1,339 for VSP amendments; $2,142 for the development of a recordkeeping system; and $2,028 for training in Year 1. Recurring costs include updates of the list of cancelled TWICs ($1,392 per year), ongoing training ($507 per year), and ongoing recordkeeping ($321 per year). We estimate the annualized costs to vessels of this rulemaking to be approximately $7,270 at a 7 percent discount rate. These costs are shown in Table 10.

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[66] Delays may result from operational, human- or weather-related factors.

[67] The final RA contains a discussion of the different failure mode scenarios where an invalid TWIC reader transaction would lead to potential delays and the use of secondary processing.

[68] Although current regulations require that TWICs be valid and readable upon request by DHS or law enforcement personnel, we anticipate that widespread use of TWIC readers will initially identify more unreadable cards. However, we expect the regular use of TWIC readers to ultimately serve to enhance compliance with current TWIC card validity and readability requirements.

[69] This cost is explained in greater detail in the Final Regulatory Analysis and Final Regulatory Flexibility Analysis. It includes an estimated $194.93 for the average TWIC-holder to travel to a TWIC Enrollment Center, cost to be away from work, wait time at the Enrollment Center, and the $60 fee for a replacement TWIC. Some TWIC-holders may not need to pay a replacement fee if the TWIC is determined faulty as a result of the card production process. However, these TWIC-holders would chose to travel to a TWIC Enrollment Center to get a replacement TWIC instead of waiting to receive it by mail.

TABLE 10—TOTAL VESSEL COSTS (RISK GROUP A WITH MORE THAN 20 TWIC-HOLDING CREWMEMBERS) *

Year	Undiscounted	7%	3%
1	$20,971	$19,599	$20,360
2	3,627	3,168	3,419
3	3,627	2,961	3,319
4	3,627	2,767	3,222
5	3,627	2,586	3,129
6	17,697	11,792	14,821
7	3,627	2,259	2,949
8	3,627	2,111	2,863
9	3,627	1,973	2,780
10	3,627	1,844	2,699
Total	67,682	51,058	59,560
Annualized		7,270	$,982

* Because the affected population is only one vessel, we assume that this vessel will comply within the first year of implementation.

We estimate the annualized cost of this final rule to industry over 10 years to be approximately $21.9 million at a 7 percent discount rate. The main cost drivers of this final rule are the acquisition and installation of TWIC readers and the maintenance of the affected entity's electronic TWIC inspection system. Initial costs, which will be distributed over a 2-year implementation phase, consist predominantly of the costs to purchase and install TWIC readers and to integrate them with owners' and operators' PACS. Annual costs will be driven by costs associated with updates of the list of cancelled TWICs, recordkeeping, training, system maintenance and opportunity costs associated with failed TWIC reader transactions.

We estimated the present value average costs of this final rule on industry for a 10-year period as summarized in Table 11. The costs were discounted at 3 and 7 percent as set forth by guidance in OMB Circular A–4.

TABLE 11—TOTAL INDUSTRY COST, RISK GROUP A

[$ Millions]

Year	Facility	Vessel	Additional costs *	Undiscounted	7%	3%
1	$51.5	$0.0	$4.8	$56.3	$52.6	$54.7
2	52.6	0.0	4.8	57.4	50.2	54.1
3	3.3	0.0	4.8	8.1	6.6	7.4
4	3.3	0.0	4.8	8.1	6.2	7.2
5	3.3	0.0	4.8	8.1	5.8	7.0
6	13.2	0.0	4.8	18.0	12.0	15.1
7	13.2	0.0	4.8	18.0	11.2	14.6
8	3.3	0.0	4.8	8.1	4.7	6.4
9	3.3	0.0	4.8	8.1	4.4	6.2
10	3.3	0.0	4.8	8.1	4.1	6.0
Total	150.3	0.1	48.0	198.4	157.8	178.8
Annualized					22.5	21.0

* This includes additional delay, travel, and TWIC replacement costs due to TWIC failures.

As this final rule will require amendments to FSPs and VSPs, we estimate a cost to the government to review these amendments during the implementation period, but do not anticipate any further annual cost to the government from this final rule. For the total implementation period, the total government cost will be $93,177 at a 7 percent discount rate. Table 12 shows the 10-year government costs.

TABLE 12—GOVERNMENT COSTS *

Year	FSP	VSP	Total undiscounted	7%	3%
1	$51,450	$166	$51,616	$48,239	$50,112
2	51,450	0	51,450	44,938	48,497
3	0	0	0	0	0
4	0	0	0	0	0
5	0	0	0	0	0
6	0	0	0	0	0
7	0	0	0	0	0
8	0	0	0	0	0
9	0	0	0	0	0
10	0	0	0	0	0

TABLE 12—GOVERNMENT COSTS *—Continued

Year	FSP	VSP	Total undiscounted	7%	3%
Total	102,900	166	103,066	93,177	98,609
Annualized			13,266		11,560

* After implementation, we estimate there would be no additional government costs for plan review as additional updates would be covered under existing plan review requirements and resources.

Based on the provisions in this final rule and recent data, we estimated the average first-year cost of this final rule (combined industry and government) to be approximately $52.1 million or $54.1 million at a 7 or 3 percent discount rate, respectively. The undiscounted annual recurring cost for this final rule is approximately $7.5 million in every year except years 6 and 7, due to equipment replacement 5 years after implementation. The annualized cost of this final rule is $21.9 million at 7 percent and $20.4 million at 3 percent. The 10-year cost to industry and government of this final rule is approximately $153.8 million at a 7 percent discount rate, and $173.9 million at a 3 percent discount rate.

The benefits of the final rule include enhancing the security of vessels, ports, and other facilities by ensuring that only individuals who hold TWICs are granted unescorted access to secure areas at those locations and reducing regulatory uncertainty by closing the gap between MTSA and SAFE Port Act requirements for electronic TWIC inspection and regulatory requirements.

Electronic TWIC inspection programs will make identification, validation, and verification of individuals attempting to gain unescorted access to a secure area more reliable and also will help to alleviate potential sources of human error when checking credentials at access points. Identity verification ensures that the individual presenting the TWIC is the same person to whom the TWIC was issued. Card authentication ensures that the TWIC is not counterfeit, and card validation ensures that the TWIC has not expired or been revoked by TSA, or reported as lost, stolen, or damaged. Furthermore, the standardization of TWIC readers on a national scale could provide additional benefits in the form of efficiency gains in implementing access control systems throughout port facilities and nationally for companies operating in multiple locations.

Data limitations preclude us monetizing these benefits, but instead, we use break-even analysis. Break-even analysis is useful when it is not possible to quantify the benefits of a regulatory action. OMB Circular A–4 recommends a "threshold" or "break-even" analysis when non-quantified benefits are important to evaluating the benefits of a regulation. Break-even analysis answers the question, "How small could the value of the non-quantified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net benefits?" [70] For this rulemaking, we calculate a potential range of break-even results from the estimated consequences of the three attack scenarios that are most likely to be mitigated by the use of TWIC readers. Because the primary function of the TWIC card and electronic TWIC inspection is to enhance access control and identity verification and validation, the attack scenarios evaluated within MSRAM to provide the consequence data for this analysis were limited to the following:

- Truck Bomb
  - ○ Armed terrorists use a truck loaded with explosives to attack the target focal point. The terrorists will attempt to overcome guards and barriers if they encounter them.
- Terrorist Assault Team
  - ○ A team of terrorists using weapons and explosives attack the target focal point. Assume the terrorists have done prior planning surveillance, but have no insider support of assault.
- Passenger/Passerby Explosives/Improvised Explosive Device
  - ○ Terrorists exploit inadequate access control and detonate carried explosives at the target focal point. Assume the terrorists approach the target under cover of legitimate presence and are not armed. **Note:** for this attack mode, terrorist is not an insider.

The focus on these three attack scenarios allows us to look at specific attack scenarios that are most likely to be mitigated by the electronic TWIC inspection programs. These scenarios were chosen because they represent the scenarios most likely to benefit from the enhanced access control afforded by electronic TWIC inspection, as they require would-be attackers gaining access to the target in question. For these three attack types, the aggressor would first need to gain access to the facility to inflict maximum damage. Because the function of the electronic TWIC inspection is to enhance access control, the deployment of TWIC readers would increase the likelihood of identifying and denying access to an individual attempting nefarious acts.

For the break-even analysis, we estimate the consequences of these three scenarios by estimating the number of casualties and serious injuries that would occur had the attack been successful. To monetize the value of fatalities prevented, we use the concept of "value of a statistical life" (VSL), which is commonly used in regulatory analyses. The VSL does not represent the dollar value of a person's life, but the amount society would be willing to pay to reduce the probability of premature death. We currently use a value of $9.1 million as an estimate of VSL.[71] This break-even analysis does not consider any property damage, environmental damage, indirect or macroeconomic consequences these terrorist attacks might cause. Consequently, the economic impacts of the terrorist attacks estimated for this series of break-even analyses would be higher if these other impacts were considered.

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[70] U.S. Office of Management and Budget, Circular A–4, September 17, 2003, page 2.

[71] See the Department of Transportation's *"Guidance on the Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses" http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf.*

TABLE 13—ANNUAL RISK REDUCTION AND ATTACKS AVERTED REQUIRED FOR COSTS TO EQUAL BENEFITS, FINAL RULE ALTERNATIVE

	Annualized cost, 7% discount rate ($ Millions)	Average maximum consequence ($ Millions)	Required reduction in risk to break-even	Frequency of attacks averted to break-even
Final Rule Alternative	$21.9	$5,014.1	0.4%	One every 229 years

As shown in Table 13, an avoided terrorist attack at an average target is equivalent to $5.01 billion in avoided consequences. This final rule is estimated to cost approximately $21.9 million annually. Using the estimated annualized cost of this regulation, the annual reduction in the probability of attack to a Risk Group A facility that would just equate avoided consequences with cost is less than 0.5 percent. To state this in another way, if implementing this regulation will lower the likelihood of a successful terrorist attack by more than 0.4 percent each year, then this would be a socially efficient use of resources. This final rule would be cost effective if it prevented one terrorist attack with consequence equal to the average every 229 years ($5,014.1/$21.9). These small changes in required risk reduction suggest that the potential benefits of the final rule justify the costs.

For the final rule alternative, we assess that all Risk Group A facilities will be required to conduct electronic TWIC inspections. On the vessel side, we assess that all Risk Group A vessels with a crew size greater than 20 TWIC-holding crewmembers will likely carry two portable TWIC readers. For this alternatives analysis, we look at several different ways to implement electronic TWIC inspection requirements based on the Risk Group hierarchy. These alternatives include requiring TWIC readers for Risk Group A and B facilities, along with Risk Group A vessels with more than 14 TWIC-holding crewmembers, Risk Group A and container facilities, along with Risk Group A vessels with more than 14 TWIC-holding crewmembers, adding certain high-risk facilities to Risk Group A, including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A facilities and all self-propelled Risk Group A vessels. Table 14 summarizes the cost of the alternatives considered. The costs displayed are the 10-year costs and the 10-year annualized cost, each discounted at 7 percent.

TABLE 14—REGULATORY ALTERNATIVES

	Description	Facility population	Vessel population	Total cost ($ millions, at 7% discount rate)	Annualized cost ($ millions, at 7% discount rate)
Final Rule Alternative	All Risk Group A facilities and Risk Group A vessels with more than 20 crewmembers.	525	1	$153.8	$21.9
NPRM Alternative	All Risk Group A facilities and Risk Group A vessels with more than 14 crewmembers.	532	38	153.5	21.9
Alternative 2	All Risk Group A facilities and Risk Group A vessels (except barges).	532	138	158.2	22.5
Alternative 3	Risk Group A and all container facilities and Risk Group A vessels with more than 14 crewmembers.	651	38	182.6	26.0
Alternative 4	All Risk Group A facilities, plus additional high consequence facilities including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A vessels with more than 14 crewmembers.	1,174	38	309.5	44.1
Alternative 5 (ANPRM Alternative)	Risk Group A and B Facilities and Risk Group A vessels with more than 14 crewmembers.	2,173	38	548.9	78.1

When comparing alternatives, we also looked at the results of the break-even analysis for these alternatives. As Table 15 shows, for the overall average maximum consequence, the final rule alternative will require the lowest reduction in risk for the costs of the rule to be justified. As the purpose of this rulemaking is to enhance security to mitigate a TSI, we assess the break-even for the overall consequence of a TSI. It is assumed that the highest consequence targets will be the most attractive targets for potential terrorist attack.

TABLE 15—SUMMARY OF REQUIRED RISK REDUCTION AND ATTACKS AVERTED BY REGULATORY ALTERNATIVE, OVERALL (IN $ MILLIONS)

	Annualized cost, 7% discount rate	Average consequence	Required reduction in risk	Frequency of attacks averted
Final Rule Alternative	$21.9	$5,014.10	0.44%	One every 229 years.
NPRM Alternative	21.9	5,014.10	0.44%	One every 229.0 years.
Risk Group A facilities and all Risk Group A vessels, except barges	22.5	5,014.10	0.45%	One every 222.8 years.
Risk Group A and all container facilities and Risk Group A vessels with more than 14 crewmembers.	26.0	4,158.7	0.63%	One every 160.0 years.
All Risk Group A facilities, plus additional high consequence facilities including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A vessels with more than 14 crewmembers.	44.1	2,211.3	1.99%	One every 50.1 years.
ANPRM Alternative Risk Groups A and B facilities and Risk Group A vessels with more than 14 crewmembers.	78.1	1,647.1	4.74%	One every 21.1 years.

Final rule Alternative—Risk Group A Facilities and Risk Group A Vessels with More than 20 TWIC-Holding Crewmembers:

The analysis for this alternative is discussed in detail previously in this section, as it is the alternative we have chosen in this final rule.

NPRM Alternative—Risk Group A Facilities and Risk Group A Vessels with More than 14 TWIC-Holding Crewmembers:

The analysis for this alternative was discussed in detail in the previously published NPRM's regulatory impact analysis.[72] The two key differences between the final rule and NPRM alternative are the exemption of barge fleeting facilities reducing the affected facility population to 525 and the adoption of the crew size of 20 or more removing all vessels except one in the final rule as opposed to all 532 facilities and 38 vessels in the Risk Group A.

Alternative 2—Risk Group A Facilities and All Risk Group A Vessels, Except Barges:

This alternative would require electronic TWIC inspection to be used at all Risk Group A facilities and for all Risk Group A vessels, except barges. This alternative would increase the burden on industry and small entities by increasing the affected population from 1 vessel to 138 vessels. The number of facilities would be the same as in the NPRM alternative. Under this alternative, annualized cost of this rulemaking would remain the same at $21.9 million, at a 7 percent discount rate. The discounted 10-year costs would go from $157.9 million to $158.2 million. While this alternative does not lead to a significant increase in costs, we reject it because requiring electronic TWIC inspection on vessels with 14 or fewer TWIC-holding crewmembers is unnecessary, as crews with that few members are known to all on the vessel. This crewmember limit was proposed in the ANPRM and in the NPRM, and was based on a recommendation from TSAC. See the discussion in the NPRM on "Recurring Unescorted Access" and "TWIC Reader Exemption for Vessels with 14 or Fewer TWIC-Holding Crewmembers" for more details.[73]

Alternative 3—Risk Group A and All Container Facilities and Risk Group A Vessels with More than 14 TWIC-Holding Crewmembers:

For this alternative, we assumed that only those facilities in Risk Group A, as previously defined, and all container facilities will require electronic TWIC inspection. This alternative would increase the burden on industry and small entities by increasing the affected population from 525 facilities to 651 facilities. Under this scenario, the annualized cost of this rulemaking would increase from $21.9 million to $26.0 million, at a 7 percent discount rate. The discounted 10-year costs would go from $153.8 million to $182.6 million. The inclusion of container facilities would also potentially have adverse environmental impacts due to increased air emissions due to longer wait ("queuing") times and congestion at facilities.

We considered this alternative because of the risk associated with container facilities due to the transfer risk associated with containers. As discussed in the preamble of the NPRM, many of the high-risk threat scenarios at container facilities would not be mitigated by electronic TWIC inspection. The costs for electronic TWIC inspection at container facilities would not be justified by the amount of potential risk reduction at these facilities from such a measure. While container facilities pose a higher transfer risk (*i.e.,* there is a greater risk of a threat coming through a container facility and inflicting harm or damage elsewhere than with any other facility type), such threats are not mitigated by the use of TWIC readers.

Furthermore, the use of TWIC readers, or other access control features, would not mitigate the threat associated with the contents of a container. The electronic TWIC inspection serves as an additional access control measure, but would not improve screening of cargoes for dangerous substances or devices.

Alternative 4—Adding certain high consequence facilities to Risk Group A (these additional facilities to include petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities):

For this alternative, we moved three facility categories—petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities—into Risk Group A from Risk Group B based on the average maximum consequence for these facility types. This alternative would increase the burden on industry by increasing the affected population from 525 facilities to 1,174 facilities. Under this scenario, the annualized cost of this rulemaking would increase from $21.9 million to $44.1 million, at a 7 percent discount rate. The discounted 10-year costs would go from $153.8 million to $309.5 million.

We considered this alternative based on the high MSRAM consequences associated with these three facility types, as well as due to the perception that petroleum facilities pose a greater security risk than other facility types. Despite the high MSRAM consequences for these facility types, the overall risk as determined in the AHP were not as high as those in the current Risk Group A, and therefore, we rejected this alternative and maintained the AHP-based risk groupings.

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[72] 78 FR 17782.

[73] 78 FR 17803 and 78 FR 17813, respectively.

Alternative 5—Risk Group A and Risk Group B Facilities and Risk Group A Vessels with More than 14 Crewmembers:

Alternative 5 would require electronic TWIC inspection to be used at all Risk Group A and Risk Group B facilities, and Risk Group A vessels with greater than 14 TWIC-holding crewmembers. This alternative would increase the burden on industry and small entities by increasing the affected population from 525 facilities to 2,173 facilities. This increase in facilities would extend the affected population to facilities that fall under the second risk tier. Under this alternative, annualized cost of this rulemaking would increase from $21.9 million to $78.1 million, at a 7 percent discount rate. The discounted 10-year costs would go from $153.8 million to $548.9 million. Based on a recent study by the Homeland Security Institute, as discussed in the preamble to the NPRM, the difference in risk between facilities in Risk Groups A and B is clearly defined, indicating that the two Risk Groups do not require the same level of TWIC requirements. Further, as discussed in the benefits section of this analysis, the break-even point, or the amount of risk that would need to be reduced for costs to equal benefits, for this alternative is much higher than that of the final rule alternative. For these reasons, we rejected this alternative.

The provisions in this final rule are taken in order to meet requirements set forth in MTSA and the SAFE Port Act. The final rule, as presented, represents the lowest cost alternative, as discussed above. We have focused this rulemaking on the highest risk population so as to reduce the impacts of this rule as much as possible. Also, we have created a performance standard that allows the affected population to implement the requirements in a manner most conducive to their own business practices.

Furthermore, by allowing for flexibilities, such as the use of fixed or portable TWIC readers, and removing vessels with 20 or fewer TWIC-holding crewmembers from the requirements, we have reduced potential burden on all entities, including small entities. Furthermore, we believe that providing any additional relief for small entities would conflict with the purpose of this rulemaking, as the objective is to enhance access control and reduce risk of a TSI. Providing relief of the proposed requirements based on entity size would contradict that stated purpose and leave small entities, which may possess as great a risk as entities that exceed the Small Business Administration (SBA) size standards, more vulnerable to a TSI.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. A Final Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket, and a summary follows.

For this final rule, we estimated costs for mandatory electronic TWIC inspection for approximately 1 vessel and 525 facilities based on the risk assessment hierarchy and current data from the Coast Guard's MISLE database. Of these 525 facilities that would be affected by the electronic TWIC inspection requirements, we found 306 unique owners. Among these 306 unique owners, there were 31 government-owned entities, 114 companies that exceeded SBA small business size standards, 88 companies considered small by SBA size standards, and 73 companies for which no information was available. For the purposes of this analysis, we consider all entities for which information was not available to be small. There were no not-for-profit entities in our affected population. Of the 31 government jurisdictions that would be affected by this final rule, 24 exceed the 50,000 population threshold as defined by the Regulatory Flexibility Act to be considered small, and the remaining 7 have government revenue levels such that there would not be an impact greater than 1 percent of government revenue.[74]

We were able to find revenue information for 64 of the 88 businesses deemed small by SBA size standards.[75] We then determined the impacts of the final rule on these companies by comparing the cost of the final rule to the average per facility cost of this rulemaking. To determine the average per facility cost, we average the per facility cost for all facility types using the same cost per facility type breakdown as used to assess the costs of this proposal. We then found what percent impact on revenue the final rule will have based on implementation costs (including capital costs) and annual recurring costs (including updates of the list of cancelled TWICs, recordkeeping, and training). We estimate these costs to be, on average $195,715 per entity during the implementation period and $12,612 per entity in annual recurring cost.[76] The actual cost faced by a specific facility will vary based on a number of factors, such as the number of access points. Smaller facilities should in general incur lower costs, but the Coast Guard is unable to distinguish cost estimates on a facility-by-facility basis. We note that in some cases owners and operators might be able to finance the equipment costs as needed and such financing scenario could further decrease the impact on the facility owner and operators. We base our impact analysis on average cost to regulated entities due to the flexibility afforded by this final rule to individual facilities to determine how best to implement electronic TWIC inspection requirements.[77] Table 16 shows the potential revenue impacts for small businesses impacted by this final rule.

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[74] "Government revenues" used for this analysis include tax revenues, and in some cases, operating revenues for government owned waterfront facilities.

[75] SBA small business standards are based on either company revenue or number of employees. Many companies in our sample have employee numbers determining them small, but we were unable to find annual revenue data to pair with the employee data.

[76] These are weighted averages, based on the per facility cost displayed in Table 4 and the number of facilities by type.

[77] We do not know how a specific facility will comply with this rulemaking in regards to type and number of readers installed, number of personnel requiring training at a given facility, etc.

TABLE 16—REVENUE IMPACTS ON AFFECTED SMALL BUSINESSES—FACILITIES

Revenue impact range	Impacts from implementation costs		Impacts from recurring annual costs	
	Number of entities	Percent of entities	Number of entities	Percent of entities
0% < Impact ≤ 1%	33	52	57	89
1% < Impact ≤ 3%	4	6	6	9
3% < Impact ≤ 5%	5	8	0	0
5% < Impact ≤ 10%	8	13	1	2
Above 10%	14	22	0	0
Total	64	100	64	100

The greatest impact is expected to occur during the implementation phase when 48 percent of small businesses that we were able to find revenue data on will experience an impact of greater than 1 percent, and 22 percent of small businesses that we were able to find revenue data on will experience an impact greater than 10 percent. After implementation, the impacts decrease and 89 percent of affected small businesses will see an impact less than 1 percent. We expect the revenue impacts for years with equipment replacement to be between those for implementation and annual impacts. During those years with equipment replacement, we estimate that approximately 3 percent of businesses would see an impact greater than 1 percent, and 0 percent would see an impact greater than 10 percent.[78]

For vessels, we found that for the 1 vessel that will be affected by this final rule, there is 1 unique owner that did not qualify as small business by SBA size standards. Therefore, we do not provide a revenue impact analysis for affected small business as we provided above for affected facilities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to the OMB for its review of the collection of information. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of the final rule, the affected facilities and vessel will be required to update their FSPs and VSPs, as well as create and maintain a system of recordkeeping within 2 years of promulgation of the final rule. This requirement will be added to an existing collection with OMB control number 1625–0077.

Title: Security Plans for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625–0077.

Summary of the Collection of Information: This information collection is associated with the maritime security requirements mandated by MTSA. Security assessments, security plans, and other security-related requirements are found in 33 CFR Chapter I, subchapter H. The final rule will require certain vessel and facilities to use electronic readers designed to work with the TWIC as an access control measure. Affected owners and operators will also face requirements associated with electronic TWIC inspection, including recordkeeping requirements for those owners and operators required to use an electronic TWIC reader, and security plan amendments to incorporate TWIC requirements.

Need for Information: The information is necessary to show evidence that affected vessels and facilities are complying with the electronic TWIC inspection requirements.

Proposed Use of Information: We will use this information to ensure that facilities and vessels are properly implementing and utilizing electronic TWIC inspection programs.

Description of the Respondents: The respondents are owners and operators of certain vessel and facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H.

Number of Respondents: The number of respondents is the 525 facilities that are considered "high-risk" and would be required to modify their existing FSPs, and 1 vessel that would be required to modify its VSP to account for the electronic TWIC inspection requirements. These same populations will be required to create and maintain recordkeeping systems as well.

Frequency of Response: The FSP and VSP would need to be amended within 2 years of promulgation to include TWIC reader-related procedures. Recordkeeping requirements will need to be met along a similar timeline.

Burden of Response: The estimated burden for facilities would be 17,063 hours in the first year, 17,063 hours in the second year and 3,150 hours in the third year and all subsequent years. The burden for vessels would be 65 burden hours in year one, and 6 burden hours for all subsequent years. This includes an estimated 25 burden hours to amend the FSP or VSP, along with an implementation period burden of 40 hours and an annual burden of 6 hours for designing and maintaining a system of records for each facility or vessel, to include recordkeeping related to the list of cancelled TWICs.

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[78] We estimate an average cost per facility in years with equipment replacement to be $48,110.

Estimate of Total Annual Burden

Facilities: The estimated burden over the 2-year implementation period for facilities is 25 hours per FSP amendment. Since there are currently 525 facilities that will need to amend their FSPs, the total burden on facilities would be 13,125 hours (525 FSPs × 25 hours per amendment) during the 2-year implementation period, or 6,563 hours each of the first 2 years. Facilities would also face a recordkeeping burden of 21,000 hours during the 2-year implementation period (525 facilities × 40 hours per recordkeeping system), or 10,500 hours each year over the first 2 years. There would also be an annual recordkeeping burden of 3,150 hours (525 facilities × 6 hours per year), starting in the third year. In the second year, the 262 facilities that implemented in the first year would incur the 6 hours of annual recordkeeping, at a burden of 1,572 (262 facilities × 6 hours). The total burden for facilities is estimated at 17,063 (6,563 + 10,500) in Year 1, 17,063 in Year 2 (6,563 + 10,500), and 3,150 in Year 3.

Vessels: For the 1 vessel, the burden in the first year would be 25 hours (1 VSP × 25 hour per amendment). Vessels would also face a recordkeeping burden of 40 hours during the 1-year implementation period (1 vessel × 40 hours per recordkeeping system). There would also be an annual recordkeeping burden of 6 hours, starting in Year 2, (1 vessel × 6 hours per year). The total burden for vessels is estimated at 65 (25 + 40) in Year 1 and 6 hours in Years 2 and 3.

Total: The total additional burden due to the electronic TWIC inspection rule is estimated at 17,128 (65 for vessels and 17,063 for facilities) in Year 1, 17,069 (6 for vessel and 17,063 for facilities) in Year 2, and 3,156 (6 for vessels and 3,150 for facilities) in Year 3. The current annual burden listed in this collection of information is 1,108,043. The new burden, as a result of this final rule, in Year 1 is 1,125,171 (1,108,043 + 17,128). In Year 2, the new burden, as a result of this final rule, is 1,125,171 (1,108,043 + 17,128) and in Year 3 it is 1,111,199 (1,108,043 + 3,156). The average annual additional burden across the 3 years is 12,425.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this final rule to OMB for its review of the collection of information.

E. Federalism

A rule has implications for Federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule has been analyzed in accordance with the principles and criteria in E.O. 13132, and it has been determined that this final rule does have Federalism implications or a substantial direct effect on the States.

This final rule would update existing regulations by creating a risk-based analysis of MTSA-regulated vessels and facilities. Based on this analysis, each vessel or facility is classified according to its risk level, which then determines whether the vessel or facility will be required to use TWIC readers. Additionally, this final rule will amend recordkeeping requirements and add requirements to amend security plans in order to ensure compliance.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within fields foreclosed from regulation by the States or local governments. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)).

The Coast Guard believes the Federalism principles articulated in *Locke* apply to this final rule since it will require certain MTSA-regulated vessels to carry TWIC readers or a PACS that can conduct electronic TWIC inspection (*i.e.,* required equipment), and to conform to recordkeeping and security plan requirements. In enacting MTSA, Congress articulated a need to address nationwide port security threats while preserving the free flow of interstate and international maritime commerce. Congress identified enhancing global maritime security through implementing international security instruments as furthering this statutory purpose. MTSA's comprehensive and uniform maritime security regime, founded on the purpose of facilitating interstate and international maritime commerce, indicates that States and local governments are generally foreclosed from regulating within this field. As discussed above, vessel equipping and operation are traditionally fields foreclosed from State and local regulation. However, States and local governments have traditionally shared certain regulatory jurisdiction over waterfront facilities. Therefore, MTSA standards contained in 33 CFR part 105 (Maritime security: Facilities) are not preemptive of State or local law or regulations that do not conflict with them (*i.e.,* they would either actually conflict or would frustrate an overriding Federal need for uniformity).

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of E.O. 13132 require that for any rules with preemptive effect, the Coast Guard provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and consult with such officials early in the rulemaking process. Therefore, we invited affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to the NPRM.

Numerous State and local governments responded to the Coast Guard's invitation by actively participating in this rulemaking process. State and local government interests participated by submitting written comments and by attending and presenting their views in person at four public meetings we held across the country to solicit comments on this rulemaking. All comments have been posted to the docket for this rulemaking. Participating State and local government interests included: Alaska Marine Highway System; American Association of Port Authorities; Broward County, Florida Port Everglades Department; Calhoun Port Authority; King County, Washington Department of Transportation; New York City Department of Transportation; Port Authority of New York and New Jersey; Port of Galveston; Port of Houston Authority; Port of Seattle; Port of Stockton; Port of Tacoma; and

Washington State Department of Transportation. We considered this State and local government input in the promulgation of this final rule, and multiple changes to the final rule are attributable to these comments. Based on these consultations and the content of the final rule, we can ensure that the final rule is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, (“Civil Justice Reform”), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). Though this rule is a “significant regulatory action” under E.O. 12866, it does not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”). We have determined that it is not a “significant energy action” under E.O. 13211, because although it is a “significant regulatory action” under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB’s Office of Information and Regulatory Affairs has not designated it as a significant energy action.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA), codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

The Federal government is constantly working on improving electronic TWIC inspection standards. Under NTTAA and OMB Circular A–119, NIST is tasked with the role of encouraging and coordinating Federal agency use of voluntary consensus standards and participation in the development of relevant standards, as well as promoting coordination between the public and private sectors in the development of standards and in conformity assessment activities. NIST and TSA have established the QTL and the associated standards for identity and privilege credential products, to be managed by TSA. NIST continues to assist TSA with the development of testing suites for qualifying products in conformity to specified standards and TSA specifications.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and have concluded that this action is not likely to have a significant effect on the human environment. A Final Programmatic Environmental Assessment and a final Finding of No Significant Impact are available in the docket for this rulemaking. Our analysis indicates that electronic TWIC inspection operations will have insignificant direct, indirect or cumulative impacts on environmental resources, with special attention to potential air quality issues.

List of Subjects

33 CFR Parts 101 and 103

Harbors, Incorporation by reference, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 106

Continental shelf, Maritime security, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 101, 103, 104, 105, and 106 as follows:

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 101.105 as follows:

■ a. Add the definitions, in alphabetical order, of “biometric match”; “Canceled Card List (CCL)”; “Card Holder Unique Identifier (CHUID)”; “card validity check”; “Designated Recurring Access Area (DRAA)”; “electronic TWIC inspection”; “identity verification”; “Mobile Offshore Drilling Unit (MODU)”; “Non-TWIC visual identity verification;” “Offshore Supply Vessel (OSV)”; “Physical Access Control System (PACS)”; “Qualified Reader”; “Risk Group”; “Transparent Reader”; “TWIC reader”; and “visual TWIC inspection”; and

■ b. Revise the definitions of "bulk or in bulk"; "recurring unescorted access"; and "TWIC Program".

The revisions and additions read as follows:

§ 101.105 Definitions.

* * * * *

Biometric match means a confirmation that: One of the two biometric templates stored in the Transportation Worker Identification Credential (TWIC) matches the scanned biometric template of the person presenting the TWIC; or the alternate biometric stored in a Physical Access Control System (PACS) matches the corresponding biometric of the person.

* * * * *

Bulk or *in bulk* means a commodity that is loaded or carried without containers or labels, and that is received and handled without mark or count. This includes cargo transferred using hoses, conveyors, or vacuum systems.

* * * * *

Canceled Card List (CCL) is a list of Federal Agency Smart Credential-Numbers (FASC-Ns) that have been invalidated or revoked because TSA has determined that the TWIC-holder may pose a security threat, or the card has been reported lost, stolen, or damaged.

* * * * *

Card Holder Unique Identifier (CHUID) means the standardized data object comprised of the FASC–N, globally unique identifier, expiration date, and certificate used to validate the data integrity of other data objects on the credential.

Card validity check means electronic verification that the TWIC has not been invalidated or revoked by checking the TWIC against the TSA-supplied list of cancelled TWICs or, for vessels and facilities not in Risk Group A, by verifying that the expiration date on the face of the TWIC has not passed.

* * * * *

Designated Recurring Access Area (DRAA) means an area designated under § 101.555 where persons are permitted recurring access to a secure area of a vessel or facility.

* * * * *

Electronic TWIC inspection means the process by which the TWIC is authenticated, validated, and the individual presenting the TWIC is matched to the stored biometric template.

* * * * *

Identity verification means the process by which an individual presenting a TWIC is verified as the owner of the TWIC.

* * * * *

Mobile Offshore Drilling Unit (MODU) means the same as defined in 33 CFR 140.10.

* * * * *

Non-TWIC visual identity verification means the process by which an individual who is known to have been granted unescorted access to a secure area on a vessel or facility is matched to the picture on the facility's PACS card or a government-issued identification card.

* * * * *

Offshore Supply Vessel (OSV) means the same as defined in 46 CFR 125.160.

* * * * *

Physical Access Control System (PACS) means a system that includes devices, personnel, and policies, that controls access to and within a facility or vessel.

* * * * *

Qualified Reader means an electronic device listed on TSA's Qualified Technology List that is capable of reading a TWIC.

Recurring unescorted access refers to special access procedures within a DRAA where a person may enter a secure area without passing an electronic TWIC inspection prior to each entry into the secure area.

* * * * *

Risk Group means the risk ranking assigned to a vessel, facility, or OCS facility according to §§ 104.263, 105.253, or 106.258 of this subchapter, for the purpose of TWIC requirements in this subchapter.

* * * * *

Transparent Reader means a device capable of reading the information from a TWIC or individual seeking access and transmitting it to a system capable of conducting electronic TWIC inspection.

* * * * *

TWIC Program means those procedures and systems that a vessel, facility, or outer continental shelf (OCS) facility must implement in order to assess and validate TWICs when maintaining access control.

TWIC reader means a device capable of conducting an electronic TWIC inspection.

* * * * *

Visual TWIC inspection means the process by which the TWIC is authenticated, validated, and the individual presenting the TWIC is matched to the photograph on the face of the TWIC.

* * * * *

■ 3. Add § 101.112 to read as follows:

§ 101.112 Federalism.

(a) The regulations in 33 CFR parts 101, 103, 104, and 106 have preemptive effect over State or local regulation within the same field.

(b) The regulations in 33 CFR part 105 have preemptive effect over State or local regulations insofar as a State or local law or regulation applicable to the facilities covered by part 105 would conflict with the regulations in part 105, either by actually conflicting or by frustrating an overriding Federal need for uniformity.

§ 101.514 [Amended]

■ 4. Amend § 101.514 as follows:

■ a. In paragraph (b), remove the word "federal" and add, in its place, the word "Federal"; and

■ b. In paragraph (d), remove the word "State," and add, in its place, the word "State".

■ 5. Amend § 101.515 as follows:

■ a. In paragraph (a), remove the words "of this part shall be required to" and add, in their place, the words "must";

■ b. In paragraph (b)(1), remove the words "of behalf" and add, in their place, the words "on behalf";

■ c. In paragraph (c), remove the words "of this part"; and

■ d. Revise paragraph (d)(2).

The revision reads as follows:

§ 101.515 TWIC/Personal Identification.

* * * * *

(d) * * *

(2) Each person who has been issued or possesses a TWIC must pass an electronic TWIC inspection, and must submit his or her reference biometric, such as a fingerprint, and any other required information, such as a Personal Identification Number, upon a request from TSA, the Coast Guard, any other authorized DHS representative, or a Federal, State, or local law enforcement officer.

■ 6. Add § 101.520 to subpart E to read as follows:

§ 101.520 Electronic TWIC inspection.

To conduct electronic TWIC inspection, the owner or operator of a vessel or facility must ensure the following actions are performed.

(a) *Card authentication.* The TWIC must be authenticated by performing a challenge/response protocol using the Certificate for Card Authentication (CCA) and the associated card authentication private key stored in the TWIC.

(b) *Card validity check.* The TWIC must be checked to ensure the TWIC has not expired and against TSA's list of cancelled TWICs, and no match on the list may be found.

(c) *Identity verification.* (1) One of the biometric templates stored in the TWIC must be matched to the TWIC-holder's live sample biometric or, by matching to the PACS enrolled reference biometrics linked to the FASC–N of the TWIC; or

(2) If an individual is unable to provide a valid live sample biometric, the TWIC-holder must enter a Personal Identification Number (PIN) and pass a visual TWIC inspection.

■ 7. Add § 101.525 to subpart E to read as follows:

§ 101.525 TSA list of cancelled TWICs.

(a) At Maritime Security (MARSEC) Level 1, the card validity check must be conducted using information from the TSA that is no more than 7 days old.

(b) At MARSEC Level 2, the card validity check must be conducted using information from the TSA that is no more than 1 day old.

(c) At MARSEC Level 3, the card validity check must be conducted using information from the TSA that is no more than 1 day old.

(d) The list of cancelled TWICs used to conduct the card validity check must be updated within 12 hours of any increase in MARSEC level, no matter when the information was last updated.

(e) Only the most recently obtained list of cancelled TWICs must be used to conduct card validity checks.

■ 8. Add § 101.530 to subpart E to read as follows:

§ 101.530 PACS requirements for Risk Group A.

This section lays out requirements for a Physical Access Control System (PACS) that may be used to meet electronic TWIC inspection requirements.

(a) A PACS may use a TWIC directly to perform electronic TWIC inspection;

(b) Each PACS card issued to an individual must be linked to that individual's TWIC, and the PACS must contain the following information from each linked TWIC:

(1) The name of the TWIC-holder holder as represented in the Printed Information container of the TWIC.

(2) The TWIC-signed CHUID (with digital signature and expiration date).

(3) The TWIC resident biometric template.

(4) The TWIC digital facial image.

(5) The PACS Personal Identification Number (PIN).

(c) When first linked, a one-time electronic TWIC inspection must be performed, and the TWIC must be verified as authentic, valid, and biometrically matched to the individual presenting the TWIC.

(d) Each time the PACS card is used to gain access to a secure area, the PACS must—

(1) Conduct identity verification by:

(i) Conducting a biometric scan, and match the result with the biometric template stored in the PACS that is linked to the TWIC, or

(ii) Having the individual enter a stored PACS PIN and conducting a Non-TWIC visual identity verification as defined in § 101.105.

(2) Conduct a card validity check; and

(3) Maintain records in accordance with §§ 104.235(g) or 105.225(g) of this subchapter, as appropriate.

■ 9. Add § 101.535 to subpart E to read as follows:

§ 101.535 Electronic TWIC inspection requirements for Risk Group A.

Owners or operators of vessels or facilities subject to part 104 or 105 of this subchapter, that are assigned to Risk Group A in §§ 104.263 or 105.253 of this subchapter, must ensure that a Transportation Worker Identification Credential (TWIC) Program is implemented as follows:

(a) *Requirements for Risk Group A vessels.* Prior to each boarding of the vessel, all persons who require access to a secure area of the vessel must pass an electronic TWIC inspection before being granted unescorted access to the vessel.

(b) *Requirements for Risk Group A facilities.* Prior to each entry into a secure area of the facility, all persons must pass an electronic TWIC inspection before being granted unescorted access to secure areas of the facility.

(c) A Physical Access Control System that meets the requirements of § 101.530 may be used to meet the requirements of this section.

(d) The requirements of this section do not apply under certain situations described in §§ 101.550 or 101.555.

(e) Emergency access to secure areas, including access by law enforcement and emergency responders, does not require electronic TWIC inspection.

■ 10. Add § 101.540 to subpart E to read as follows:

§ 101.540 Electronic TWIC inspection requirements for vessels, facilities, and OCS facilities not in Risk Group A.

A vessel or facility not in Risk Group A may use the electronic TWIC inspection requirements of § 101.535 in lieu of visual TWIC inspection. If electronic TWIC inspection is used, the recordkeeping requirements of §§ 104.235(b)(9) and (c) of this subchapter, or 105.225(b)(9) and (c) of this subchapter, as appropriate, apply.

§ 101.545 [Added and Reserved]

■ 11. Add reserved § 101.545 to subpart E.

■ 12. Add § 101.550 to subpart E to read as follows:

§ 101.550 TWIC inspection requirements in special circumstances.

Owners or operators of any vessel, facility, or Outer Continental Shelf (OCS) facility subject to part 104, 105, or 106 of this subchapter must ensure that a Transportation Worker Identification Credential (TWIC) Program is implemented as follows:

(a) *Lost, damaged, stolen, or expired TWIC.* If an individual cannot present a TWIC because it has been lost, damaged, stolen, or expired, and the individual previously has been granted unescorted access to secure areas and is known to have had a TWIC, the individual may be granted unescorted access to secure areas for a period of no longer than 30 consecutive calendar days if—

(1) The individual provides proof that he or she has reported the TWIC as lost, damaged, or stolen to the Transportation Security Administration (TSA) as required in 49 CFR 1572.19(f), or the individual provides proof that he or she has applied for the renewal of an expired TWIC;

(2) The individual can present another identification credential that meets the requirements of § 101.515; and

(3) There are no other suspicious circumstances associated with the individual's claim that the TWIC was lost, damaged, or stolen.

(b) *TWIC on the Canceled Card List.* In the event an individual reports his or her TWIC as lost, damaged, or stolen, and that TWIC is then placed on the Canceled Card List, the individual may be granted unescorted access by a Physical Access Control System (PACS) that meets the requirements of § 101.530 for a period of no longer than 30 days. The individual must be known to have had a TWIC, and known to have reported the TWIC as lost, damaged, or stolen to TSA.

(c) *Special requirements for Risk Group A vessels and facilities.* If a TWIC reader or a PACS cannot read an individual's biometric templates due to poor biometric quality or no biometrics enrolled, the owner or operator may grant the individual unescorted access to secure areas based on either of the following secondary authentication procedures:

(1) The owner or operator must conduct a visual TWIC inspection and require the individual to correctly submit his or her TWIC Personal Identification Number.

(2) [Reserved]

(d) If an individual cannot present a TWIC for any reason other than those outlined in paragraphs (a) or (b) of this section, the vessel or facility operator may not grant the individual unescorted access to secure areas. The individual must be under escort at all times while in the secure area.

(e) With the exception of individuals granted access according to paragraphs (a) or (b) of this section, all individuals granted unescorted access to secure areas of a vessel, facility, or OCS facility must be able to produce their TWICs upon request from the TSA, the Coast Guard, another authorized Department of Homeland Security representative, or a Federal, State, or local law enforcement officer.

(f) There must be disciplinary measures in place to prevent fraud and abuse.

(g) Owners or operators must establish the frequency of the application of any security measures for access control in their approved security plans, particularly if these security measures are applied on a random or occasional basis.

(h) The vessel, facility, or OCS facility operator should coordinate the TWIC Program, when practical, with identification and TWIC access control measures of other entities that interface with the vessel, facility, or OCS facility.

■ 13. Add § 101.555 to subpart E to read as follows:

§ 101.555 Recurring Unescorted Access for Risk Group A vessels and facilities.

This section describes how designated TWIC-holders may access certain secure areas on Risk Group A vessels and facilities on a continual and repeated basis without undergoing repeated electronic TWIC inspections.

(a) An individual may enter a secure area on a vessel or facility without undergoing an electronic TWIC inspection under the following conditions:

(1) Access is through a Designated Recurring Access Area (DRAA), designated under an approved Vessel, Facility, or Joint Vessel-Facility Security Plan.

(2) The entire DRAA is continuously monitored by security personnel at the access points to secure areas used by personnel seeking Recurring Unescorted Access.

(3) The individual possesses a valid TWIC.

(4) The individual has passed an electronic TWIC inspection within each shift and in the presence of the on-scene security personnel.

(5) The individual passes an additional electronic TWIC inspection prior to being granted unescorted access to a secure area if he or she enters an unsecured area outside the DRAA and then returns.

(b) The following requirements apply to a DRAA:

(1) It must consist of an unsecured area where personnel will be moving into an adjacent secure area repeatedly.

(2) The entire DRAA must be visible to security personnel.

(3) During operation as a DRAA, there must be security personnel present at all times.

(c) An area may operate as a DRAA at certain times, and during other times, access to secure areas may be obtained through the procedures in § 101.535.

(d) Personnel may enter the secure areas adjacent to a DRAA at any time using the procedures in § 101.535.

PART 103—MARITIME SECURITY: AREA MARITIME SECURITY

■ 14. The authority citation for part 103 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 103.505 [Amended]

■ 15. Amend § 103.505(f) by removing the words "(*e.g.,* TWIC)".

PART 104—MARITIME SECURITY: VESSELS

■ 16. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 104.105 [Amended]

■ 17. Amend § 104.105(d) by removing the words "this part" and adding, in their place, the words "parts 101 and 104 of this subchapter".

■ 18. Add § 104.110(c) to read as follows:

§ 104.110 Exemptions.

* * * * *

(c) Vessels with a minimum manning requirement of 20 or fewer TWIC-holding crewmembers are exempt from the requirements in 33 CFR 101.535(a)(1).

■ 19. Amend § 104.115 as follows:
■ a. Revise paragraph (c); and
■ b. Remove paragraph (d).

The revision reads as follows:

§ 104.115 Compliance.

* * * * *

(c) By August 23, 2018, owners and operators of vessels subject to this part must amend their Vessel Security Plans to indicate how they will implement the TWIC requirements in this subchapter. By August 23, 2018, owners and operators of vessels subject to this part must operate in accordance with the TWIC provisions found within this subchapter.

§ 104.120 [Amended]

■ 20. Amend § 104.120(a) introductory text by removing the words ", on or before July 1, 2004,".

§ 104.200 [Amended]

■ 21. Amend § 104.200 as follows:
■ a. In paragraph (b)(12) introductory text, remove the word "part" and add, in its place, the word "subchapter"; and
■ b. In paragraph (b)(14), remove the words "§ 104.265(c) of this part" and add, in their place, the words "§ 101.550(a) of this subchapter".

§ 104.215 [Amended]

■ 22. Amend § 104.215 as follows:
■ a. In paragraph (b)(5), remove the second use of the word "and";
■ b. In paragraph (b)(6), remove the symbol "." and add, in its place, the word "; and"; and
■ c. In paragraph (b)(7), after the word "TWIC", add the symbol ".".

■ 23. Amend § 104.235 as follows:
■ a. In paragraph (b)(7), remove the second use of the word "and";
■ b. In paragraph (b)(8), remove the symbol "." and add, in its place, the word "; and";
■ c. Add paragraph (b)(9); and
■ d. Revise paragraph (c).

The addition and revision read as follows:

§ 104.235 Vessel recordkeeping requirements.

* * * * *

(b) * * *

(9) *Electronic Reader/Physical Access Control System (PACS).* For each individual granted unescorted access to a secure area, the: FASC–N; date and time that unescorted access was granted; and, if captured, the individual's name. Additionally, documentation to demonstrate that the owner or operator has updated the Canceled Card List with the frequency required in § 101.525 of this subchapter.

(c) Any records required by this part must be protected from unauthorized access or disclosure. TWIC reader records and similar records in a PACS are sensitive security information and must be protected in accordance with 49 CFR part 1520.

§ 104.260 [Amended]

■ 24. Amend § 104.260(b) by removing the word "shall" wherever it appears and adding in its place the word “must”.

■ 25. Add § 104.263 to read as follows:

§ 104.263 Risk Group classifications for vessels.

(a) For purposes of the Transportation Worker Identification Credential requirements of this subchapter, the following vessels subject to this part are in Risk Group A:

(1) Vessels that carry Certain Dangerous Cargoes in bulk.

(2) Vessels certificated to carry more than 1,000 passengers.

(3) Any vessel engaged in towing a vessel subject to paragraph (a)(1) or (a)(2) of this section.

(b) Vessels may move from one Risk Group classification to another, based on the cargo they are carrying or handling at any given time. An owner or operator expecting a vessel to move between Risk Groups must explain, in the Vessel Security Plan, the timing of such movements, as well as how the vessel will move between the requirements of the higher and lower Risk Groups, with particular attention to the security measures to be taken moving from a lower Risk Group to a higher Risk Group.

■ 26. Amend § 104.265 as follows:
■ a. Revise paragraph (a)(4);
■ b. Remove paragraphs (c) and (d);
■ c. Redesignate paragraphs (e) through (h) as (c) through (f), respectively;
■ d. Revise newly redesignated paragraph (d)(1);
■ e. In newly redesignated paragraph (e)(6), remove the word “and”;
■ f. In newly redesignated paragraph (e)(7), remove the symbol “.” and add, in its place, the word “; or”;
■ g. Add paragraph (e)(8);
■ h. In newly redesignated paragraph (f)(9), remove the word “or”;
■ i. In newly redesignated paragraph (f)(10), remove the symbol “.” and add, in its place, the word “; or”; and
■ j. Add paragraph (f)(11).

The revisions and additions read as follows:

§ 104.265 Security measures for access control.

(a) * * *

(4) Prevent an unescorted individual from entering an area of the vessel that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area. Individuals seeking unescorted access to a secure area on a vessel in Risk Group A must pass electronic TWIC inspection and those seeking unescorted access to a secure area on a vessel not in Risk Group A must pass either electronic TWIC inspection or visual TWIC inspection.

* * * * *

(d) * * *

(1) Implement a TWIC Program as set out in subpart E of part 101 of this subchapter, as applicable, and in accordance with the vessel's assigned Risk Group, as set out in § 104.263;

* * * * *

(e) * * *

(8) Implementing additional electronic TWIC inspection requirements, as required by § 104.263, and by subpart E of part 101 of this subchapter, if relevant.

* * * * *

(f) * * *

(11) Implementing additional electronic TWIC inspection requirements, as required by § 104.263, and by subchapter E of part 101 of this subchapter, if relevant.

§ 104.267 [Amended]

■ 27. Amend § 104.267(a) by removing the last sentence.

§ 104.292 [Amended]

■ 28. Amend § 104.292 as follows:
■ a. In paragraph (b) introductory text, remove the words “§ 104.265(f)(2), (f)(4), and (f)(9)” and add, in their place, the words “§ 104.265(d)(2), (d)(4), and (d)(9)”, and remove the symbol “:” and add, in its place, the symbol “—”;
■ b. In paragraph (e)(3), remove the words “§ 104.265(f)(4) and (g)(1)” and add, in their place, the words “§ 104.265(d)(4) and (e)(1)”; and
■ c. In paragraph (f), remove the words “§ 104.265(f)(4) and (h)(1)”, and add, in their place, the words “§ 104.265(d)(4) and (f)(1)”.

■ 29. Amend § 104.405 as follows:
■ a. Revise paragraph (a)(10); and
■ b. In paragraph (b), remove the last sentence.

The revision reads as follows:

§ 104.405 Format of the Vessel Security Plan (VSP).

(a) * * *

(10) Security measures for access control, including the vessel's TWIC Program, designated passenger access areas and employee access areas;

* * * * *

§ 104.410 [Amended]

■ 30. Amend § 104.410 as follows:
■ a. In paragraph (a) introductory text, remove the words “on or before December 31, 2003,”, and remove the symbol “:” and add, in its place, the symbol “—”;
■ b. In paragraph (b), remove the words “or by December 31, 2003, whichever is later”; and
■ c. In paragraph (c) introductory text, remove the symbol “:” and add, in its place, the symbol “—”.

PART 105—MARITIME SECURITY: FACILITIES

■ 31. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 32. Revise § 105.110 to read as follows:

§ 105.110 Exemptions.

(a) A public access area designated under § 105.106 is exempt from the requirements for screening of persons, baggage, and personal effects and identification of persons in subpart E of part 101 of this subchapter, as applicable, in §§ 105.255 and § 105.285(a)(1).

(b) An owner or operator of any general shipyard facility as defined in § 101.105 of this subchapter is exempt from the requirements of this part unless the facility—

(1) Is subject to parts 126, 127, or 154 of this chapter; or

(2) Provides any other service to vessels subject to part 104 of this subchapter not related to construction, repair, rehabilitation, refurbishment, or rebuilding.

(c) *Public access facility.* (1) The COTP may exempt a public access facility from the requirements of this part, including establishing conditions for which such an exemption is granted, to ensure that adequate security is maintained.

(2) The owner or operator of any public access facility exempted under this section must—

(i) Comply with any COTP conditions for the exemption; and

(ii) Ensure that the cognizant COTP has the appropriate information for contacting the individual with security responsibilities for the public access facility at all times.

(3) The cognizant COTP may withdraw the exemption for a public access facility at any time the owner or operator fails to comply with any requirement of the COTP as a condition of the exemption or any measure ordered by the COTP pursuant to existing COTP authority.

(d) An owner or operator of a facility is not subject to this part if the facility receives only vessels to be laid-up, dismantled, or otherwise placed out of commission provided that the vessels are not carrying and do not receive cargo or passengers at that facility.

(e) Barge fleeting facilities without shore side access are exempt from the requirements in 33 CFR 101.535(b)(1).

■ 33. Revise § 105.115 to read as follows:

§ 105.115 Compliance dates.

(a) Facility owners or operators must submit to the cognizant Captain of the Port (COTP) for each facility—

(1) The Facility Security Plan (FSP) described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) Facility owners or operators wishing to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure area(s) must do so by submitting an amendment to their FSP to their cognizant COTP, in accordance with § 105.415.

(c) By August 23, 2018, owners and operators of facilities subject to this part must amend their FSPs to indicate how they will implement the TWIC requirements in this subchapter. By August 23, 2018, owners and operators of facilities subject to this part must be operating in accordance with the TWIC provisions found within this subchapter.

§ 105.120 [Amended]

■ 34. Amend the introductory text of § 105.120 by removing the words ", on or before July 1, 2004,".

§ 105.200 [Amended]

■ 35. Amend § 105.200 as follows:

■ a. In paragraph (b) introductory text, remove the symbol ":" and add, in its place, the symbol "—";

■ b. In paragraph (b)(6), remove the word "program" and add, in its place, the word "Program", and remove the word "part" and add, in its place, the word "subchapter", and remove the symbol ":" and add, in its place, the symbol "—";

■ c. In paragraph (b)(15), remove the words "section 105.255(c) of this part" and add, in their place, the words "§ 101.550 of this subchapter"; and

■ d. In paragraph (b)(16), remove the words "of this part".

■ 36. Amend § 105.225 as follows:

■ a. In paragraph (b)(7), remove the second use of the word "and";

■ b. In paragraph (b)(8), remove the symbol "." and add, in its place, the word "; and";

■ c. Add paragraph (b)(9); and

■ d. Revise paragraph (c).

The addition and revision read as follows:

§ 105.225 Facility recordkeeping requirements.

* * * * *

(b) * * *

(9) *TWIC Reader/Physical Access Control System (PACS).* For each individual granted unescorted access to a secure area, the: FASC–N; date and time that unescorted access was granted; and, if captured, the individual's name. Additionally, documentation to demonstrate that the owner or operator has updated the Canceled Card List with the frequency required in § 101.525 of this subchapter.

(c) Any record required by this part must be protected from unauthorized access or disclosure. Electronic reader records and similar records in a PACS are sensitive security information and must be protected in accordance with 49 CFR part 1520.

■ 37. Add § 105.253 to read as follows:

§ 105.253 Risk Group classifications for facilities.

(a) For purposes of the Transportation Worker Identification Credential (TWIC) requirements of this subchapter, the following facilities subject to this part are in Risk Group A:

(1) Facilities that handle Certain Dangerous Cargoes (CDC) in bulk or receive vessels carrying CDC in bulk.

(2) Facilities that receive vessels certificated to carry more than 1,000 passengers.

(b) Facilities may move from one Risk Group classification to another, based on the material they handle or the types of vessels they receive at any given time. An owner or operator of a facility expected to move between Risk Groups must explain, in the Facility Security Plan, the timing of such movements, as well as how the facility will move between the requirements of the higher and lower Risk Groups, with particular attention to the security measures to be taken when moving from a lower Risk Group to a higher Risk Group.

■ 38. Amend § 105.255 as follows:

■ a. Revise paragraph (a)(4);

■ b. Remove paragraphs (c) and (d);

■ c. Redesignate paragraphs (e) through (h) as (c) through (f), respectively;

■ d. Revise newly redesignated paragraph (d)(1);

■ e. In newly redesignated paragraph (d)(4) introductory text, remove the word "shall" and add, in its place, the word "must";

■ f. In newly redesignated paragraph (d)(4)(vi), remove the words "paragraph (d) of this section" and add, in their place, the words "subpart E of part 101 of this subchapter";

■ g. In newly redesignated paragraph (e)(6), remove the word "or";

■ h. In newly redesignated paragraph (e)(7), remove the symbol "." and add, in its place, the word "; or";

■ i. Add paragraph (e)(8);

■ j. In newly redesignated paragraph (f)(8), remove the word "or";

■ k. In newly redesignated paragraph (f)(9), remove the symbol "." and add, in its place, the word "; or"; and

■ l. Add paragraph (f)(10).

The revisions and additions read as follows:

§ 105.255 Security measures for access control.

(a) * * *

(4) Prevent an unescorted individual from entering an area of the facility that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area. Individuals seeking unescorted access to a secure area in a facility in Risk Group A must pass electronic TWIC inspection and those seeking unescorted access to a secure area in a facility not in Risk Group A must pass either electronic TWIC inspection or visual TWIC inspection.

* * * * *

(d) * * *

(1) Implement a TWIC Program as set out in subpart E of part 101 of this subchapter, as applicable, and in accordance with the facility's assigned Risk Group, as set out in § 105.253.

* * * * *

(e) * * *

(8) Implementing additional electronic TWIC inspection requirements, as required by § 105.253, and by subpart E of part 101 of this subchapter, if relevant.

* * * * *

(f) * * *

(10) Implementing additional electronic TWIC inspection requirements, as required by § 105.253, and by subchapter E of part 101 of this subchapter, if relevant.

§ 105.257 [Amended]

■ 39. Amend § 105.257(a) by removing the last sentence.

§ 105.290 [Amended]

■ 40. Amend § 105.290(b) by removing the word "shall" and adding, in its place, the word "must", and by removing the words "this part" and adding, in their place, the words "subpart E of part 101 of this subchapter".

§ 105.296 [Amended]

■ 41. Amend § 105.296(a)(4) by removing the words "§ 105.255 of this part" and adding, in their place, the words "subpart E of part 101 of this subchapter, as applicable, and in accordance with the facility's assigned Risk Group, as described in § 105.253".

■ 42. Amend § 105.405 as follows:

■ a. Revise paragraph (a)(10); and

■ b. In paragraph (b), remove the last sentence.

The revision reads as follows:

§ 105.405 Format and content of the Facility Security Plan (FSP).

(a) * * *

(10) Security measures for access control, including the facility's TWIC Program and designated public access areas;

* * * * *

§ 105.410 [Amended]

■ 43. Amend § 105.410 as follows:

■ a. In paragraph (a) introductory text, remove the words "On or before December 31, 2003, the" and add, in their place, the word "The"; and

■ b. In paragraph (b), remove the words "or by December 31, 2003, whichever is later".

PART 106—MARINE SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 44. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department Of Homeland Security Delegation No. 0170.1.

■ 45. Revise § 106.110 to read as follows:

§ 106.110 Compliance dates.

(a) OCS facility owners or operators must submit to the cognizant District Commander for each OCS facility—

(1) The Facility Security Plan described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the OCS facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) OCS facilities built on or after July 1, 2004 must submit a Facility Security Plan for approval 60 days prior to beginning operations.

§ 106.115 [Amended]

■ 46. Amend the introductory text of § 106.115 by removing the words "before July 1, 2004,".

§ 106.200 [Amended]

■ 47. Amend § 106.200 as follows:

■ a. In paragraph (b)(6) introductory text, remove the word "program" and add, in its place, the word "Program", and remove the word "part" and add, in its place, the word "subchapter";

■ b. In paragraph (b)(8), remove the word "Level" wherever it appears and add, in each place, the word "level";

■ c. In paragraph (b)(9), after the word "with", add the words "the requirements in"; and

■ d. In paragraph (b)(12), remove the words "§ 106.260(c) of this part" and add, in their place, the words "§ 101.550 of this subchapter".

■ 48. Add § 106.258 to read as follows:

§ 106.258 Risk Group classification for OCS facilities.

For the purposes of this subchapter, no OCS facilities are considered Risk Group A.

■ 49. Amend § 106.260 as follows:

■ a. Remove paragraphs (c) and (d);

■ b. Redesignate paragraphs (e) through (h) as (c) through (f), respectively;

■ c. Revise newly redesignated paragraph (d)(1);

■ d. In newly redesignated paragraph (e)(3), remove the word "or";

■ e. In newly redesignated paragraph (e)(4), remove the symbol "." and add, in its place, the word "; or";

■ f. Add paragraph (e)(5);

■ g. In newly redesignated paragraph (f)(7), remove the word "or";

■ h. In newly redesignated paragraph (f)(8), remove the symbol "." and add, in its place, the word "; or"; and

■ i. Add paragraph (f)(9).

The revisions and additions read as follows:

§ 106.260 Security measures for access control.

* * * * *

(d) * * *

(1) Implement TWIC as set out in subpart E of part 101 of this subchapter and in accordance with the OCS facility's assigned Risk Group, as set out in § 106.258.

* * * * *

(e) * * *

(5) Implementing additional electronic TWIC inspection requirements, as required by § 106.258, and by subpart E of part 101 of this subchapter.

(f) * * *

(9) Implementing additional electronic TWIC inspection requirements, as required by § 106.258, and by subpart E of part 101 of this subchapter.

§ 106.262 [Amended]

■ 50. Amend § 106.262(a) by removing the last sentence.

■ 51. Amend § 106.405 as follows:

■ a. Revise paragraph (a)(10); and

■ b. In paragraph (b), remove the last sentence.

The revision reads as follows:

§ 106.405 Format and content of the Facility Security Plan (FSP).

(a) * * *

(10) Security measures for access control, including the OCS facility's TWIC Program;

* * * * *

§ 106.410 [Amended]

■ 52. Amend § 106.410 as follows:

■ a. In paragraph (a) introductory text, remove the words "On or before December 31, 2003, the" and add, in their place, the word "The" and remove the symbol ":" and add, in its place, the symbol "—"; and

■ b. In paragraph (b), remove the words "or by December 31, 2003, whichever is later".

Dated: August 8, 2016.

Paul F. Zukunft,

Admiral, Commandant, U.S. Coast Guard.

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23 CFR Parts 635, 710, and 810
Right-of-Way and Real Estate; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 635, 710, and 810

[Docket No. FHWA–2014–0026]

RIN 2125–AF62

Right-of-Way and Real Estate

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations governing the acquisition, management, and disposal of real property for transportation programs and projects receiving funds under title 23, United States Code. The revisions are prompted by enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). Section 1302 of MAP–21 includes new early acquisition flexibilities that can be used by State departments of transportation (SDOT) and other grantees of title 23 Federal-aid highway program funds. This final rule addresses the use of those new early acquisition flexibilities. The FHWA is also updating the real estate regulations to reflect the agency's experience with the Federal-aid highway program since the last comprehensive rulemaking for part 710, which occurred more than a decade ago. The update clarifies the Federal-State partnership, streamlines processes to better meet current Federal-aid highway program needs, and eliminates duplicative and outdated regulatory language. The enactment of the Fixing America's Surface Transportation (FAST) Act had a minimal effect on this rule.

DATES: This final rule is effective September 22, 2016.

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SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background
II. Analysis of Comments
III. Rulemaking Analyses and Notices

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov.*

I. Background

The FHWA published a Notice of Proposed Rulemaking (NPRM) on November 24, 2014 (79 FR 69998), proposing to amend regulations governing the acquisition, management, and disposal of real property for transportation programs and projects receiving funds under title 23, United States Code.

Since the publication of the NPRM, the FAST Act was enacted into law on December 4, 2015. The FAST Act has minimal effect on this rule. The FAST Act at section 1109 repealed the Transportation Alternatives Program (TAP) (23 U.S.C. 213) and replaced it with a set-aside of Surface Transportation Block Grant (STBG) program funding for transportation alternatives (TA). The final rule has been changed to reflect the new program name.

This final rule retains the major NPRM provisions without change. In particular, this final rule adds new authorities for early acquisition of property to part 710 and clarifies the Federal-aid eligibility of a broad range of real property interests that constitute less than full fee ownership. It streamlines program requirements, clarifies the Federal-State partnership, and provides a comprehensive update of part 710. Related regulations in 23 CFR parts 635 and 810 were also updated to ensure consistency with the part 710 changes. The updates to 23 CFR parts 635, 710, and 810 better align the language of the regulations with current program needs and best practices.

As proposed in the NPRM, important changes in the final rule include:

(1) Expanding the permitted use of conditional right-of-way certifications that allows a grantee to proceed with construction contract bidding in certain situations where not all real property interests needed for the project have been acquired;

(2) clarifying the roles and responsibilities of SDOTs, their subgrantees, and those entities carrying out a Federal-aid project on behalf of the SDOT;

(3) clarifying the use of Stewardship/Oversight Agreements between FHWA and the SDOT, and specifying which approvals required under part 710 are assigned to the SDOT;

(4) providing authority as to how grantees other than the SDOT can use acceptable right-of-way (ROW) procedures other than the SDOT ROW manual to meet their compliance and oversight responsibilities for real property;

(5) simplifying right-of-way use requirements, including combining the concepts of air space and air rights agreements into the one concept of ROW use agreements to handle leases and other time-limited non-highway uses;

(6) eliminating detailed ROW requirements for design-build projects;

(7) establishing a requirement for a real property agreement between FHWA and an acquiring agency for certain eligible transportation alternative projects funded under the STBG Program; and

(8) implementing the early acquisition provisions of MAP–21 that improve a State's ability to preserve real property for a transportation facility.

As part of the NPRM, FHWA estimated the incremental costs associated with the new requirements proposed in the NPRM that represented a change to current practices for State DOTs and Metropolitan Planning Organizations. The FHWA believes that the expected qualitative and quantitative benefits from the use of the early acquisition flexibilities alone will exceed the cost of implementing the rule. In addition, FHWA believes that significant benefits may accrue because this rule will clarify and streamline additional requirements including property management requirements, stewardship and oversight requirements, and Federal Land transfer requirements. The FHWA did not receive comments on its cost estimates or discussion of benefits.

All comments received in response to the NPRM have been considered in adopting this final rule. Comments were received from 18 entities. The commenters included: 14 SDOTs, the American Association of State Highway Transportation Officials (AASHTO), one Federal Agency, one consultant, and one private citizen.

II. Analysis of Comments

The following discussion summarizes the comments submitted to the docket on the NPRM, notes changes that have been made to the final rule, and states why certain recommendations or suggestions have not been incorporated into the final rule.

General Discussion of Comments

In general, most of the commenters expressed support and appreciation for the revisions and concurred that the rule will improve efficiency, effectiveness, and accountability in the delivery of transportation programs and projects receiving funds under title 23 of the United States Code. Three commenters asked that FHWA include provisions for Construction Manager General Contractor (CMGC) and appraisal valuation waiver limits. Several commenters proposed that additional flexibilities be included in this final rule and also requested additional guidance or regulatory language on implementation of several provisions.

The FHWA has responded to each comment received during the comment period and has made changes to the final rule where necessary. The FHWA is developing an implementation guide and a set of frequently asked questions to assist with the implementation of the final rule.

Comments on Construction Manager/General Contractor

Two commenters, both from the California DOT (Caltrans), proposed to include CMGC in the final rule. One commenter suggested referencing it in the regulation at 23 CFR 635.309, the section on authorization of ROW and the other commenter suggested developing a new section of the regulation on CMGC. Also, Caltrans noted that CMGC methods are no longer a demonstration project but rather an alternative method of project delivery and as such, should be referenced by this section (23 CFR part 635).

The FHWA does not believe that incorporating CMGC by reference in 23 CFR 635.309 will effectively address all issues pertinent to CMGC. The FHWA also does not believe that addressing CMGC is within the scope of this final rule on real estate acquisition, as CMGC is a broader topic focused primarily on contracting and project development issues. Although CMGC will not be further addressed in this final rule, FHWA published an NPRM on CMGC on June 29, 2015, at 80 FR 36939.

Comments on Right-of-Way Certification

Several commenters (AASHTO, New York State DOT (NYSDOT), Oklahoma DOT (ODOT), and Washington State DOT (WSDOT)) supported providing additional flexibility in the use of conditional ROW certifications.

The AASHTO suggested that a ROW certification should not be required as early as the submittal of Plans, Specifications, and Estimates (PS&E) to FHWA, but States should instead be allowed to provide this certification as late as 30 days prior to issuance of the Notice to Proceed (NTP).

The FHWA does not believe that a standard allowing submission of a ROW certificate 30 days prior to issuance of a NTP is consistent with the purpose, intent, and timing of the ROW certificate. In part, a standard allowing submission of a certificate 30 days prior to the NTP may introduce uncertainty in the bid process, give rise to contractor delay claims, and may cause property owners to be more frequently in the path of construction. The FHWA believes that requiring a ROW certification at the time of PS&E, coupled with the flexibility to utilize conditional ROW certifications to allow advertising the project for bid while continuing to clear the ROW, strikes the appropriate balance between advancing a project while also ensuring property owners' rights are protected.

The NYSDOT noted that it might be clearer to use terminology other than NTP since it is typically associated with design-build projects, not design/bid/build projects, and inquired whether the intent of this rule was to apply only to design-build projects. Also, NYSDOT suggested that it might be clearer to add the phrase "or award" to clarify that these provisions apply to either NTP or award.

The FHWA clarifies in this final rule that the ROW certification requirements apply both to design-build projects and design/bid/build projects. The certification requirements for design-build projects are specifically addressed in § 635.309(p). The FHWA does not believe that adding "or award" would be appropriate, as this addition could be interpreted as allowing construction to begin in instances where all properties have not been secured as a normal part of the process. This final rule clarifies that allowing construction to begin before all properties have been cleared should only be done in exceptional circumstances where it is in the public interest to proceed with construction before acquisition activities are complete.

The ODOT expressed concern that the statement in the conditional ROW certification that the FHWA will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before acquisition activities are complete, may be subject to misinterpretation. Instead, ODOT suggested that if comparable housing is available for displaced persons, the requirements for approving a conditional ROW certification should be deemed to be met for all requests.

The FHWA appreciates that the determination that comparable housing is available is an important milestone to ensure that displaced persons' rights are protected. However, ensuring that comparable housing is available is only one of several factors FHWA will consider in making such a determination. The SDOTs should work directly with their FHWA Division Office to develop additional details relevant to the use, consideration, and approval of conditional ROW certifications in their ROW manuals. In addition, the SDOT's Stewardship and Oversight agreement may serve to document approval authorities and reduce any uncertainty as to process.

The WSDOT requested clarification on FHWA's expectation regarding the requirement to provide an updated notification prior to issuing an NTP when there are excepted parcels. It asked if there was an expectation that the ROW certificate be updated after bid opening, but prior to issuing the NTP.

The final rule at § 635.309(c)(3)(iv), states that "Prior to the State issuing a notice to proceed with construction to the contractor, the State shall provide an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained along with a realistic date when physical occupancy and use is anticipated." The updated notification must be provided to FHWA prior to issuing an NTP. Updating the ROW certificate may be sufficient; however, FHWA leaves it to the discretion of the FHWA Division office to determine the type of form used to document the updated notification. The procedure must be documented in the State ROW manual.

Comment on Increasing the Threshold for an Appraisal and a Waiver

One public agency, the *U.S.* Fish and Wildlife Service, requested that the threshold for an appraisal and a waiver valuation be increased.

The FHWA believes that making the suggested changes would require changes to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*) (Uniform Act) regulation, which is outside of the scope of this rulemaking.

Comment on the Length of Occupancy Requirements

The Connecticut DOT commented that because the length of occupancy requirements changed under MAP–21 (for home-owners it was reduced from 180 to 90 days), it would seem logical that the "valid lien" requirement period for the determination of Mortgage

Differential Payments would have been reduced to 90 days as well.

The FHWA believes that making the suggested changes would require changes to the Uniform Act regulation, which is outside of the scope of this rulemaking.

Comments on New Terminology—Grantee/Subgrantee at § 710.103 and Definition of Grantee at § 710.105

Three commenters, AASHTO, South Dakota DOT (SDDOT), and Colorado DOT (CDOT) expressed concern that the specific terms (including grantee, subgrantee, SDOT, and State) and the definition of grantee used to describe to whom and when the requirements of this rule apply, are unclear. In part, the commenters noted that they are primarily attempting to comply with eligibility requirements to receive reimbursement and do not believe that the use of grantee or other similar descriptors is an accurate use of the terms.

In addition, Caltrans noted that the terms "title 23 funds," "title 23 grant funds," "grant funds provided under title 23," and "grant funds," are used interchangeably in the regulations and suggested that for purposes of clarity only one term be used to describe these funds.

The FHWA acknowledges that the regulations cover a broad range of subjects and entities. The FHWA continues to believe that the scope of the regulations, the many parties referred to in the regulations, and the nature of each reference make it impractical to use a general definition and description. Doing so would lead to uncertainty about the applicability of provisions of this rule. As a result, this final rule will continue to include definitions for the terms "grantee" and "subgrantee." The term "grantee" is used to refer to all parties directly receiving title 23 grant funding. The term "subgrantee" is used to refer to parties receiving funding indirectly.

Comment on the Removal of "Air Rights" and "Air Space" Definition—§ 710.105

The WSDOT and a private citizen commented on the removal of the definition of air space. The WSDOT noted that the definition, although proposed to be deleted, was used in the regulations as a part of the definition for real property and real property interest. Also, the private citizen was concerned that eliminating the concepts of air space and air rights and instead using a ROW Use Agreement will mask the intent of the regulation and remove transparency.

The FHWA recognizes that the term "airspace" is used in sections 111(a) and 142(f) of title 23, U.S.C., as well as in FHWA regulations. The FHWA notes that the terms airspace and air rights are still valid description of a real property right; however, these terms are now referred to under a comprehensive title—"real property interest." The FHWA believes that the terms "air rights" and "airspace" are describing interests that do not need separate definitions. As defined in the current rule, air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace. Airspace is defined as that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way project boundaries. The FHWA believes that describing and granting requests using a singular comprehensive description rather than several definitions will ensure clarity within the regulation. Real property interests will no longer be granted by an air rights agreement; rather, FHWA will now use a blanket agreement called a "ROW use agreement." The FHWA does not believe that using this type of agreement will result in any misuse because the requirements for considering and approving a proposed use have not changed. The intent is not to mask or to remove transparency, but rather to streamline this process by eliminating redundant terms and more effectively focus on the various highway uses and the impact on the facilities.

Comment on Mitigation Definition—§ 710.105(b)

The Caltrans noted that including mitigation in the definition of ROW may result in delaying a ROW certification until all mitigation commitments are purchased. The Caltrans stated that these transactions are often between other States and/or Federal agencies and any significant time delay could impact construction advertisement and financial expenditures.

The FHWA does not believe that the inclusion of the term "mitigation" in the definition of ROW requires that all real property interests in mitigation properties necessary for the project be secured at the time of ROW certification or that it will necessarily cause other delays. The FHWA believes that real property interests in mitigation parcels needed for the project, to the extent practicable, should be secured and included in the ROW certification statement.

Notification that real property interests in mitigation parcels needed for the project have not been secured at the time of ROW certification must be provided in the bid proposals identifying that work to ensure the contractor is aware that the process for acquiring the necessary real property interests will be underway concurrently with the highway construction. Consequently, proceeding with construction while attempting to secure real property interests needed for mitigation may create exposure to delay claims and other risks to the SDOT. While the FHWA does not believe that such risks will be great, SDOTs should carefully consider the risks.

Comment on Option Definition—§ 710.105(b)

The CDOT agreed with the addition of the definition of "option" and the use of the term as it will ensure that eligibility requirements for reimbursement when an option is used are understood.

The FHWA appreciates the comment and agrees that the definition is needed.

Comment on the RAMP (Real Estate Acquisition Plan) Definition—§ 710.105(b)

The NYSDOT requested that in addition to the definition of a RAMP in the final rule, a sample of a RAMP and what it includes should be added to the final rule.

The FHWA does not believe that it is practical to provide samples of a RAMP or a list of what should be included in a RAMP in a way that addresses each SDOT's needs. The SDOTs should work with their respective FHWA Division office partners to develop updates to their ROW manual which lists requirements for a RAMP, and the process to be followed in requesting, reviewing, and approving a RAMP.

The WSDOT stated that the definition of a RAMP included in the final rule should include information captured in the NPRM summary, which in part stated that the use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.

The FHWA agrees with the comment that adding the information discussing the appropriate parties who may use a RAMP at § 710.201(d)(3) will provide needed details on appropriate use of RAMPs. The FHWA has incorporated the language in this final rule.

Comment on ROW Use Agreement Definition—§ 710.105(b)

Pennsylvania DOT (PennDOT) commented that the definition of a ROW use agreement should not include a highway occupancy permit because a highway occupancy permit is not a real property interest. The PennDOT expressed concern that the definition may lead to future ROW damage claims when the utility is required to relocate as a result of a highway project.

The FHWA notes that the final rule definition does not specifically include highway occupancy permits, but instead focuses more broadly on non-highway uses. The final rule addresses utility permits at § 710.405(a)(2), which lists a number of exceptions that do not apply to the ROW use agreement, including utilities and railroads (which are governed by other sections of this title), bikeways, and pedestrian walkways.

Comment on Legal Settlement Definition—§ 710.105(b)

Caltrans noted that this section references an "authorized legal representative." Caltrans suggested deleting this reference and using instead the same statement found in § 710.305(c), a "responsible official of the acquiring agency." They commented that the term "legal" seems to imply that the delegated representative must be an attorney.

The FHWA agrees that a minor change is necessary to ensure that the applicability and meaning of this section is clear. The final rule now references a "responsible official." The definition of "legal settlement" in the final rule is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency that has the legal power vested in him or her by State law.

Comment on ROW Manual Requirements—§ 710.201(c)

Caltrans suggested that the final rule include "legal settlements" in the list of ROW functions and procedures to be described in the ROW manual.

The FHWA agrees that adding "legal settlements" to this list adds clarity and has made the change in this final rule. However, the requirements in this part of the regulation are not meant to be an exhaustive list of functions and procedures that must be described in the ROW manual, but rather a list that illustrates several of the functions and procedures. The FHWA believes that each SDOT should determine the appropriate functions to list in its ROW manual.

Comments on ROW Manual Alternative (RAMP)—§ 710.201(d)

Six commenters (AASHTO, SDDOT, Caltrans, ODOT, Georgia DOT (GDOT), and Wisconsin DOT (WisDOT)), supported the requirement that a State ROW manual be used by all agencies in a State. The AASHTO and SDDOT voiced concern about the proposed allowance for use of alternatives to a State ROW manual, and noted that permitting the use of alternatives to the State ROW manual does not seem compatible with the statement in the NPRM that FHWA believes that it is necessary to ensure that other grantees of title 23 funds meet the same requirements that the SDOT currently meets.

Caltrans commented that the oversight required to review alternatives to an approved SDOT ROW manual would be "devastating" because Caltrans is not sufficiently staffed to conduct these reviews. Several commenters (ODOT, GDOT and WisDOT), voiced similar concerns about the administrative effort necessary to review and approve alternatives to SDOT ROW manuals.

The ODOT noted that FHWA anticipated in the NPRM that the number of non-State DOT grantees will continue to increase, and that the role of non-State DOT parties in title 23 projects and programs will continue to evolve and grow. The ODOT further noted that additional funding for increased oversight was not addressed in the proposed rulemaking and that it supports this measure, but only if the proper structure is put in place for the program to succeed.

The GDOT commented that it believes that the creation of separate, local, right-of-way manuals and utilization of RAMPS that may conflict with SDOT manuals could create challenges as SDOTs provide oversight and issue ROW certifications.

The FHWA appreciates the insight provided in the comments regarding the potential difficulties and costs of allowing alternatives to the use of an approved SDOT ROW manual. However, a number of the commenters incorrectly assumed that the use of an alternative to SDOT ROW manuals did not require SDOT permission. If an SDOT subgrantee would like to use an alternative to an SDOT ROW manual, it must first gain the SDOT's permission to do so. The FHWA has added language to this section clarifying that the ROW manual options can only be used with SDOT approval. The FHWA understands that not all SDOTs will permit the use of alternatives to the SDOT ROW manual. In developing a SDOT ROW manual, the SDOT must clearly state whether it will allow alternatives. If allowed, the manual must also include the SDOTs process for considering use of an alternative to the SDOT ROW manual and that the review and approval process for that alternative must be clearly documented.

The WisDOT requested that FHWA ensure that under the final rule SDOT's would have the authority to approve any RAMP or ROW Manual agreements developed by an entity that requires WisDOT oversight. The WisDOT was concerned about reviewing, approving, and cataloging the many RAMPs that local public agencies (LPA) may submit. It noted that WisDOT has drafted and maintained a LPA ROW manual which municipalities are already required to use and they felt that this process would be consistent with the rule's flexibility.

The FHWA agrees that the final rule does not require the use of alternatives to the SDOT ROW manual and thus ensures that an SDOT will have the discretion to decide whether or not to permit the use of a RAMP or other alternative to a ROW manual.

Comment on Assignment of FHWA Approval Actions to a SDOT—§ 710.201(h)

The Idaho Transportation Department (ITD) and WSDOT expressed concern regarding FHWA's proposed revisions pertaining to SDOT assumption of some of FHWA's approvals and property related oversight. They noted that the current regulation states that the SDOT and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for. The NPRM proposed changing this language to provide that FHWA will be responsible for "any action not expressly assigned to the State DOT" in the Stewardship/Oversight Agreement between the State DOT and FHWA. The commenters requested that FHWA expand on this statement to clarify its intent.

After considering these comments, FHWA is retaining the language with one clarifying change. The FHWA inserted "approval" into the sentence so that it now reads as follows: "The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement." This change clarifies that only the FHWA approvals and property-related oversight that FHWA transfers to the SDOT must be in the Stewardship/Oversight Agreement. The FHWA notes that in accordance with long-standing policy and the provisions of 23 U.S.C. 106(c), FHWA uses the Stewardship/Oversight Agreement executed between FHWA and the SDOT to document the transfer of responsibility for an array of project decisions from FHWA to the SDOT. This policy of using the Stewardship/Oversight Agreement as the vehicle for transferring FHWA decisionmaking authority to the SDOT applies across the Federal-aid highway program, except in certain limited instances where stand-alone agreements are contemplated by statute (such as the assignment of environmental review responsibilities to States under 23 U.S.C. 327 and programmatic categorical exclusion agreements under Section 1318(d)(3) of MAP–21).

Accordingly, approvals and property-related oversight that will be made by the SDOT instead of FHWA must be documented in the applicable Stewardship/Oversight Agreement. The SDOT ROW manual cannot be used to assign or delegate decisionmaking authority to the SDOT, or to expand decisionmaking authority transferred to the SDOT under the Stewardship/Oversight Agreement. Any decisionmaking action not expressly given to the SDOT under the Stewardship/Oversight Agreement is retained by FHWA. There are many ROW oversight and project development activities that SDOTs carry out that do not involve an approval or property related oversight under the law (including regulations). Those other types of actions are documented in the SDOT ROW manual, which details how such responsibilities will be carried out by the SDOT, but will not typically be included in the Stewardship/Oversight Agreement.

The WSDOT inquired about programmatic agreements and whether a programmatic agreement would override a Stewardship/Oversight agreement.

As noted in response to the previous comment, any transfer of FHWA decisionmaking responsibilities for real estate matters to the SDOT must be through the applicable Stewardship/Oversight Agreement. Any other agreements and the SDOT ROW manual must be consistent with the Stewardship/Oversight Agreement.

Comments on the List of Activities Allowed Prior to NEPA (National Environmental Policy Act)—§ 710.203(a)(3)

The ODOT commented that it strongly endorses the revisions regarding the preparation of appraisals, appraisal reviews, and appraisal waivers that can occur prior to completion of a NEPA decision for a project subject to title 23. It estimates that this change will reduce the preconstruction phase by up to 3 months. The WSDOT also requested that preliminary relocation planning activities be added as an eligible activity in 23 CFR 710.203(a)(3) and as an eligible expense in § 710.203(b).

The final rule states that contact with potentially affected property owners is permissible for the purposes of developing an appraisal of real property. All negotiations and interviews with potentially displaced persons must be deferred until after the NEPA decision, except in two cases: 1) Early acquisitions under § 710.501; and 2) hardship or protective acquisitions under § 710.503. However, FHWA agrees that certain relocation planning activities and associated expenses which do not require personal contact or interviews with those who may be displaced should be eligible activities prior to a NEPA decision. The final rule allows eligibility for these preliminary relocation planning activities including, but not limited to, costs associated with developing a list of comparables, identifying replacement neighborhoods, and documenting available public services. This list is not exclusive.

Comments on Including Closing and Other Acquisition Cost—§ 710.203(b)

The CDOT provided comments supporting the inclusion of closing and other acquisition-related costs as eligible for reimbursement. The ITD welcomed the discussion and explanation of eligible costs. Three commenters (AASHTO, CDOT, and NYSDOT) commented that the subsection of the final rule allowing the costs associated with administrative settlements (in accordance with 49 CFR 24.102(i)), legal settlements, court awards, and costs incidental to the condemnation process, should specifically include the phrase "closing and other acquisition-related costs" so that it would be clear that these costs are also officially eligible for reimbursement.

The FHWA agrees that adding language from the NPRM preamble which directly addressed eligibility for these costs to the regulation will help to further clarify that costs associated with closing and costs of finalizing the ROW acquisition are direct eligible costs. The FHWA included a provision in this final rule at § 710.203(b)(1)(vi) which states that ordinary and reasonable costs in closing and finalizing the acquisition are reimbursable. However, FHWA does not believe that including an exhaustive list of eligible costs in this regulation, which would include costs associated with closing or finalizing the acquisition, is practical or necessary. Each grantee is expected to determine and document in its SDOT ROW manual what are considered customary and usual costs in that State.

Comments on Reimbursement of Attorney Fees—§ 710.203(b)(1)(iv)

The AASHTO supported including agency attorney fees and excluding other attorney fees, unless required by State law or approved by FHWA.

Two commenters, CDOT and NYSDOT, provided comments on reimbursement of attorney's fees. The CDOT stated that it supports including reimbursement of the acquiring agency's attorney fees and excluding other attorney fees unless required by State law or approved by FHWA. The NYSDOT asked whether the regulations should also include a provision for reimbursement of attorney fees for other parties (*i.e.,* property owner).

The FHWA appreciates CDOT's support of the reimbursement of acquiring agency's attorney fees. As a result no changes were made. Also, FHWA is aware that several States have statutes requiring reimbursement of a property owner's attorney fees, but notes that a number of States have no such statute. The FHWA agrees that a decision to provide for reimbursement of a property owner's attorney fees is appropriately left to State law and is more appropriately addressed and documented in the SDOT ROW manual.

Comment on Waiver Evaluation Instead of Appraisal Waiver —§ 710.203(b)(1)(v)

The AASHTO and CDOT commented that the use of the term "waiver valuation" instead of "appraisal waiver" is an improvement and that it relates more closely to the language in 49 CFR part 24.

The FHWA appreciates the comment and agrees that "waiver valuation" is a more appropriate term. As a result, the final rule now uses the term wavier valuation.

Comment on Alternate Access Point Eligible Expense—§ 710.203(b)(6)(ii)

The AASHTO and CDOT commented that adding a reference to "alternate access points" in this section and making expenses related to the provision of "alternate access points" outside the ROW an eligible expense for reimbursement was appreciated.

The FHWA appreciates the comment and agrees. No additional changes were made to this section of the regulation.

Comment on Non-State DOT Grantee Projects—§ 710.307(b)

The ITD requested clarification of the last sentence of § 710.307(b). It felt that the sentence was too general and it was not clear whether FHWA would review the subgrantee projects done through our oversight and administration.

The definition of a "grantee" found at § 710.105(b) states that grantee is a "party that directly receives title 23 funds and is accountable to the FHWA for the use of such funds and for compliance with applicable Federal requirements." As a result, a non-State DOT grantee would be a recipient of Federal funds directly from FHWA, thereby requiring FHWA to provide review and approval of ROW availability statements, certifications, and other project documentation in accordance with applicable law. Subgrantees are not direct recipients of Federal funds since they receive their funds through the SDOT. The direct recipient of Federal funds in this rule is referred to as the SDOT, who in turn provides the Federal funds to the subrecipient. As such, the SDOT, not FHWA, is required to provide oversight and administration to the subrecipient.

Comments on Design-Builder Use of ROW Manual or RAMP—§ 710.309(d)(1)

Several commenters expressed appreciation for clarification of the design-build requirements. However, four commenters (AASHTO, Caltrans, GDOT and PennDOT) noted that all projects should be required to use the SDOT ROW manual and should not be allowed to use a RAMP. The PennDOT was concerned that allowing the use of a RAMP would effectively supersede the SDOT's oversight role.

The FHWA understands that several of the commenters interpreted the new RAMP flexibility within this final rule as allowing either FHWA or a subgrantee to approve use of a RAMP. The FHWA appreciates the question and clarified in the regulation that an SDOT or other grantee that is responsible for oversight must first make a determination that it will allow the use of a RAMP by its subgrantee. The SDOTs may choose one of three procedures to demonstrate that the FHWA-approved ROW procedures will be followed. According to §§ 710.201(d)(1) through (3), an acquiring agency may use: (1) The FHWA-approved SDOT ROW manual; (2) its own ROW manual which must be approved by the reviewing agency that it meets Federal and State requirements; or (3) a RAMP setting forth the procedures the acquiring agency will follow which must be approved by the reviewing agency. The decision as to which procedure is allowed is ultimately left to the discretion of the SDOT for all programs which use Federal-aid funds supplied by the SDOT.

Comment on Park and Ride Lots and Air Rights—§ 710.403(b)

The AASHTO was concerned that § 710.403(b) could possibly be interpreted as restricting beneficial non-highway uses, such as parking within the Interstate ROW, which could have a negative impact on Park and Ride lots and air space leases.

Park and Ride lots continue to be subject to the requirements and conditions of 23 U.S.C. 137 and 23 CFR 810.106. The FHWA does not believe that the requirements of 23 CFR 710.403(b) can be read as prohibiting park and ride lots or creating additional conditions for permitting them. In order to clarify this point, FHWA has added language to the final rule referencing 23 U.S.C. 137 and 23 CFR 810.106.

Comments on Determining Excess Property in ROW Manual or RAMP—§ 710.403(c).

The ITD requested that the section begin with the following statement: "The purpose of this section is . . . ." It commented that the section is new and believed that the additional language would help to better provide insight into the purpose of the section.

The FHWA appreciates the suggestion but believes that the first sentence adequately states the subject of the paragraph—that grantees shall specify their procedures in their approved ROW manual or RAMP.

The NYSDOT strongly preferred keeping the list of organizational units with whom the grantee must coordinate to make a determination of excess property in the regulations. It feared that once the final rule is published, it may appear that the requirements for coordination among organization units had been reduced, which would diminish the importance of following the prescribed process of circulating an excess determination request through the organizational units.

The FHWA understands the commenter's concern. However, the removal of the list of organizational units was not intended to reduce the requirements. Each State has its own internal structure and processes that differ. The FHWA believes SDOTs are best qualified to determine what type of internal coordination is appropriate. The FHWA notes that the process used and the determination of which organizational units should be contacted are to be documented in the State ROW manual, which FHWA approves.

Comments on Charging Fair Market Value—§ 710.403(e)

The PennDOT requested that § 710.403(e) be revised to include the following statement: ". . . submitted to FHWA in writing and may be approved by FHWA (if not assigned to SDOT) in the following situations . . . ."

The FHWA uses the Stewardship/Oversight Agreement executed between FHWA and the SDOT to document the transfer of responsibility for an array of project decisions from FHWA to the SDOT. However, making an exception to the requirement to charge fair market value is not an action that FHWA may delegate or assign. The FHWA retains that approval authority. As a result, no change was made to the language.

The NYSDOT requested clarification of the phrase "must be in the public interest." It asked whether that phrase would preclude the SDOT from issuing an Alternate Use and Occupancy permit for fair market value unless it makes a public interest determination.

The FHWA requires a public interest determination if the real property interest lies within the ROW limits, even though fair market value is charged. A public interest determination is needed in the following cases: (1) Proposing to use the existing ROW for a non-highway, alternate use (with the exception of permits issued for construction of a highway project such as utility permits.) (See §§ 710.405(a)(1)(2)); and (2) If real property interests inside or outside the ROW limits are sold or leased for *less* than fair market value (See § 710.403(e)). The FHWA does not require a public interest determination if the property is located outside of the ROW and sold or leased for fair market value.

The PennDOT also requested further explanation of what information would be acceptable to provide assurance that the public receives benefit to justify less than fair market value.

As stated in the preamble of the NPRM, the criteria for determining whether adequate social, environmental, or economic benefits are present must be clearly and unambiguously detailed in the approved ROW manual in order to clearly document the specific positive benefits that the grantee and public will be receiving as a result of the proposed disposal. The FHWA believes this final rule provides the SDOT and the FHWA Division Office the flexibility to determine and document the criteria necessary to justify whether adequate social, environmental, or economic benefits are present to determine a fair return.

Comments on ROW Use Agreements for Non-Highway Use—§ 710.405(a)

The ITD requested a definition for ROW use agreement and was unsure of what uses can be included in the agreement, and also asked where bikeway and pedestrian walkways issues are explained in the final rule. The ODOT expressed concern that ROW use agreement is too broadly applied in this rule and may impact future permitting activities, such as utility permits, which are not properly the subject of ROW use agreements.

To address these comments, FHWA added clarifying language to this part ("except for the Interstate highways") to ensure that the delegation questions above are clearly addressed for the Interstate. The FHWA provides a definition of the ROW use agreement in the final rule at § 710.105(b). To determine if a non-highway use is allowed within the ROW limits, the request must meet the terms and conditions outlined in § 710.405. However, there are exceptions where the ROW use agreement does not apply, including railroads, public utilities, bikeways and pedestrian walkways (see § 710.405(a)(2)). Although the previous terms, "air rights or air space," have been replaced with "real property interests," the FHWA fully expects the SDOT evaluation process to embody the same considerations for protecting the transportation facility that the current regulation calls for in its air space, air rights agreements, and leasing provisions.

Comments on Information Needed To Protect Federal Interest in Facilities.—§ 710.405(b)

The PennDOT requested a revision to the language at 23 CFR part 710.405(b)(7) to add "if not assigned to SDOT" when requiring FHWA approval if the agreement affects a Federal-aid highway.

The FHWA agrees and made the requested revision in order to clarify this sentence.

The PennDOT also requested that FHWA delete the references to a guidance document for additional terms and conditions appropriate for inclusion in the ROW use agreements. The PennDOT requested that any regulatory requirements for ROW use agreements be listed directly in the regulation. It reasoned that guidance can be revised outside the regulatory review process. If this reference remains in the regulation, the SDOT requested that the language be clarified so that it is clear that the other terms and conditions listed in the guidance are not mandatory requirements.

The FHWA referenced the air rights guidance to provide additional terms that SDOTs might employ in ROW use agreements, as needed. As such, the reference to air rights will remain. However, language will be added to clarify that the terms and conditions in the guidance document are not mandatory requirements.

In addition, PennDOT suggested that § 710.405(d) be revised if it is applied to the disposition of excess ROW since it should not have to conform to the current design and safety criteria. However, if there are proposed changes to the highway as a result of the proposed use of the excess ROW, then PennDOT agrees it would require compliance with current design and safety criteria.

The FHWA believes that in a situation where property within the project limits is determined by the SDOT to be in excess of its needs, the SDOT and FHWA Division office must ensure the proposed use and improvement to the excess ROW is in the public need and/or interest.

Comments on Application Requirements for Use of ROW Interests—§ 710.405(e)

The CDOT asked for clarification and guidance on how to document that the ROW use agreement is in the public interest.

The purpose of the phrase "public interest" is to require the development of a determination of whether the proposed use is consistent with public need and/or interest. The final rule does not require a specific standard or require that indicators be considered. Each SDOT should set the standards for documenting public interest in its ROW manual. Measures that might be used may include a benefit to the public expected from the proposed use, addressing a long standing public need, a financial benefit to the public from the use, or a social or environmental benefit from the use.

The Caltrans, NYSDOT, and PennDOT questioned whether the use of 3D plans should be necessary in all cases and also pointed out that 3D plans were not defined.

The FHWA or the grantee may require 3D plans or presentations on major projects such as air rights involving highway tunnels, subway tunnels, railroad tunnels, above and underground parking decks, etc. However, if the real property interest is used as vacant land, leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities which do not require subsurface construction, excavation or other disturbance (such as a bus shelter) and similar uses, then 3D plans normally would not be required. The FHWA added the language "if required by FHWA or the Grantee" to add clarity. The FHWA does not believe that a definition of 3D plans is necessary because, as used in this rule, there is no one single standard that may be used. The FHWA expects that when 3D presentations are necessary, that the 3D plans will adequately depict the proposed use and its impacts.

Comments on Disposal of Excess Property—§ 710.409

The Colorado DOT and PennDOT were concerned that a request for disposal must comply with some of the criteria required for ROW use agreements. They reasoned that if a property is determined to be excess, then it should be subject only to the requirement that the SDOT receive fair market value for its disposal and that any potential use of the property need not be considered.

The FHWA has reviewed the regulation and agrees that applying all of the requirements and criteria applicable to a lease or other temporary ROW use agreement to a disposal action is overly broad. The FHWA has revised this section and eliminated the specific references to requirements in §§ 710.403 and 710.405, which are focused on ROW use agreement actions.

Comment on Property Acquisition Alternatives—§ 710.501

The CDOT noted that the proposed regulations provide a process for approving early acquisitions which gives an additional tool to deliver projects efficiently and effectively.

The FHWA appreciates the comment. No changes were made to this section of the regulation.

Comment on State Funded Early Acquisition Eligible for Future Credit—§ 710.501(c)

The ITD asked if a SDOT can acquire property using State funds and be credited toward its non-Federal share of the project cost up to the maximum limit of its financial involvement.

The FHWA has not included a change in the final rule to allow for what amounts to a method to apply excess credit to another project. The allowance for a credit continues to be a credit for costs of acquiring property for the project as part of the agency's non-

Federal share. Any costs which exceed the non-Federal share for that project are not creditable in most instances.

Comment on Timing of FHWA Concurrence—§ 710.501(c)(5)

The PennDOT asked for clarification on "the timing of obtaining FHWA concurrence during the project development process for early acquisitions."

The FHWA emphasizes that State funded early acquisition continues to be an at-risk acquisition for the SDOT. To be eligible for Federal-aid participation, the concurrence provided for in this section requires that the environmental review process for the transportation project be completed and that each of the six criteria in this section are determined to have been met. Each SDOT should specify the process and timing for seeking a credit in its ROW manual. A ROW certification would be one appropriate milestone for requesting a credit; other milestones might include when the project reaches a specified percentage of project completion or when the project is determined to have been completed.

Comments on State Funded Early Acquisition Eligible for Future Reimbursement—§ 710.501(d)

The PennDOT commented that it would like the regulation to list the terms and conditions of 23 U.S.C. 108(c)(3) rather than just reference the statute.

The FHWA agrees that this change will make it easier for the user of this regulation and has added the terms and conditions found at 23 U.S.C. 108(c)(3) to the regulatory text.

The WisDOT commented that it has concerns about the requirement that a State must have a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and that the acquisition be certified by the Governor. The WisDOT was also concerned about meeting the requirements of statewide and nonmetropolitan planning as a part of this requirement. Further, WisDOT asked for clarification on meeting the requirements of this part and inquired about the possibility of getting a waiver for this requirement.

The FHWA does not have legal authority to issue a waiver for this statutory requirement. However, FHWA is completing a research project to examine several States that have processes that may be consistent with these requirements. The FHWA will share the research findings on its Web site as soon as the final report is completed. The FHWA believes that providing examples of processes will give interested SDOTs a starting point in determining if they have a process that meets the requirements for statewide and nonmetropolitan planning contained in 23 U.S.C. 108(c)(3).

Comments on Federally-Funded Early Acquisition—§ 710.501(e)

Several commenters (AASHTO, GDOT, CDOT, ITD, and WisDOT) provided comments on various parts of this section. The AASHTO and GDOT both welcomed the new authority for federally funded early acquisitions, but expressed concerns that procedural and documentation requirements could deter States from taking advantage of this new flexibility. They encouraged FHWA to implement this new authority in a way that avoids unnecessary administrative burdens and provides a high degree of consistency and predictability in FHWA's decisions.

The FHWA agrees that it is important to ensure that unnecessary administrative burdens do not deter the implementation of these flexibilities. The FHWA believes that SDOTs can develop and provide the required documents with the least administrative burden that is practical. The FHWA will continue to work with the SDOTs to ensure that FHWA's decisionmaking process is transparent, efficient, and reasonable.

The AASHTO and the CDOT commented that the factors listed in the preamble which address what FHWA may consider when deciding whether to approve a federally funded early acquisition are above and beyond the list of factors that must be covered in the State's certification under 23 CFR 710.501(e)(1) through (e)(4).

As noted in the NPRM, FHWA does not believe that it is practical to try to capture in the regulation every scenario for complying with the requirements in 23 U.S.C. 108(d)(3)(B). The preamble discussion did not create a list of factors that will be applied to every decision, but rather factors that it may consider and that SDOTs should also consider when carrying out federally funded early acquisition. The FHWA noted in the preamble that it expects to wait until it has more experience administering the certification process before considering issuing implementation guidance. This continues to be FHWA's position. In the interim, FHWA will work directly with SDOTs considering a federally funded early acquisition to address any questions that may arise about the discretionary factors to ensure that SDOTs can use these flexibilities.

Comment on Allowing 4(f) Property Acquisition—§ 710.501(e)(2)(ii)

The AASHTO, CDOT, and GDOT requested that FHWA reconsider the requirement in § 710.501(e)(2)(ii) that federally funded early acquisitions may "not involve land described in 23 U.S.C. 138." Such lands are commonly known as "Section 4(f) property," which is defined in 23 CFR 774.17 as "publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance." The commenters suggested a more flexible approach, such as one that would allow for a case-by-case determination regarding early acquisition for Section 4(f) properties. Specifically, they suggested that the involvement of Section 4(f) resources could be listed as one of the factors that the FHWA considers in deciding whether to approve Federal funds for an early acquisition. They felt that this flexibility may be especially helpful when the Section 4(f) status of a property is uncertain, as would be the case with some historic properties.

The FHWA revised the final rule to provide additional flexibility by clarifying that the acquisition of a Section 4(f) property itself is prohibited but that all acquisitions that may involve a Section 4(f) property are not expressly prohibited. For example, if all of the other provisions in § 710.501(e) are met, a property that is adjacent to a Section 4(f) property could be acquired. Section 701.501(e)(2)(i) now states that the acquisition of the real property interest does not require FHWA approval under 23 CFR 774.3.

The FHWA did not adopt the request for case-by-case exceptions for early acquisition of a Section 4(f) property because the Section 4(f) regulation does not include such an exception. In addition, the regulations implementing Section 106 of the National Historic Preservation Act, 36 CFR part 800, do not contain an exception from consultation when the eligibility of a property is undetermined. However, as noted in the NPRM, the option of acquiring a Section 4(f) property early by using hardship acquisition and protective buying remains a viable alternative for SDOTs should the need arise. This alternative is more appropriate because a hardship acquisition or protective buying occurs when the proposed transportation project, for which the property would be needed, has progressed into the NEPA phase when more specific information is available about the location, design, alternatives, and other factors. This information is necessary to determine what the requisite Section 4(f) determination and Section 106 consultation requirements are. Therefore, hardship acquisition and protective buying continue to be the only options that FHWA believes are appropriate for early Section 4(f) property acquisition.

Comments on Acquiring by Negotiation—§ 710.501(e)(2)(viii)

The WisDOT commented that it supports allowing a "friendly condemnation" to clear or quiet the title for real property interests acquired as part of a federally funded early acquisition project. In part of its comment, it referenced complex acquisitions as being a determining factor in the use of condemnation to clear title.

The FHWA is not proposing that a complex acquisition would necessarily be a requirement for using condemnation to clear title, but rather condemnation to clear title would be used in cases where the property owner and the agency have a binding agreement of sale, but cannot clear title for any number of reasons.

Early Acquisition Project Included as a Project in STIP/TIP—§ 710.501(e)(3)

The AASHTO, GDOT, CDOT, and ITD asked about the definition of an early acquisition project in this part of the regulation and asked FHWA to clarify in either the preamble or rule that compliance with this requirement does not necessarily mean that each individual acquisition be included as a separate project in the Transportation Improvement Plan (TIP). They requested that the final rule clarify that a package of related acquisitions—*e.g.*, all acquisitions for a project or portion of a project—can be included as a single line item within a TIP. In addition, ITD asked if there could be a generic project named "early acquisition."

A generic project named "early acquisition" would not meet the requirements. This final rule includes language which in part requires that each federally funded early acquisition project must be added as a separate project in the TIP or State Transportation Improvement Plan (STIP). Since a number of conditions and issues surround each early acquisition project, transparency is essential to provide proper management of these projects.

The AASHTO, CDOT, and GDOT correctly note that ". . . all acquisitions for a project or portion of a project can be included as a single line item within a TIP." The NPRM and this final rule include a definition of early acquisition project which states: "Early Acquisition Project means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor." In most cases, acquisition of parcels unrelated to a specific project or portion of a project does not meet the definition or requirements of an early acquisition project in this regulation. A generic project or a statewide project for all early acquisitions would not, therefore, meet the requirements of this final rule.

Comments on Prohibited Activity—§ 710.501(f)

The AASHTO, GDOT, ITD, and WisDOT commented on the prohibited activities described in this part. The AASHTO and Georgia DOT agreed with the language stating that a State may carry out limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project. They felt that this language helps to clarify that the statute's prohibition against "developing" property acquired as part of an early acquisition project does not prevent the State from taking actions necessary to protect the public health and safety.

The ITD asked if their assumption is correct that a SDOT can take ownership of real property before the completion of the NEPA process for the transportation project but not allow a change to the property's use or configuration in any way that might impact the NEPA process (except for the certain health and welfare reasons).

The FHWA agrees that ITD's understanding is correct. The NPRM preamble provided a detailed discussion of prohibited activities which, in part, states that this new acquisition authority is premised on a "buy and hold" concept, in which the acquisition activity results only in a change in ownership of the real property interest, but otherwise typically maintains the pre-acquisition uses and conditions. The State agency, as part of the environmental review of the federally assisted early acquisition project, must include an appropriate analysis of the impacts of the acquisition, including relocation, and any interim activity planned for the real property interests until the property is used for the proposed transportation project (such as property maintenance to maintain the existing condition of the property, or demolition for public safety reasons). This analysis will be used to determine whether the early acquisition project's impacts are acceptable.

The FHWA believes this "buy and hold" approach is consistent with the limitation in 23 U.S.C. 108(d)(6). That provision does not allow real property interests acquired as part of a federally assisted early acquired project to be developed in anticipation of the proposed transportation project until the NEPA review process for the proposed transportation project is concluded. The language in the final rule provides direction on what "developed in anticipation of a project" means. Prohibited activities include demolition, site preparation, clearing and grubbing, and construction that may have an adverse environmental impact or cause a change in the use or character of the real property. There may be very limited instances in which development activities may be appropriate.

The WisDOT was concerned that it would not be allowed to perform demolition or site preparation on properties it purchases as an early acquisition with Federal funding until the environmental review is done. It noted that depending on how long the review takes, there are concerns with vandalism on the property and the cost of managing (maintenance, snow removal, grass cutting, etc.) the property until such time the environmental review is finished. It stated that certain activities are allowed to protect public safety, but that it would need guidance and clarification on that.

The FHWA agrees that there will be costs associated with managing and maintaining real property interests acquired as a federally funded early acquisition. The WisDOT is also correct that certain activities necessary to protect the public health or safety which were considered during the environmental review for the early acquisition project can be carried out. The FHWA will consider developing additional guidance to further answer questions that may arise about prohibited activities for real property interest acquired as part of a federally funded early acquisition project.

Comment on Reimbursement—§ 710.501(g)

The ITD commented that the definition of "offset" in this section was not clear and asked if "offset" and "local match" are the same, and requested clarification on both the intent and purpose for this section.

Local match and offset are not the same concepts. Local match allows for a credit based on contributions made towards the local share of the cost of a project. As explained in the NPRM, this section requires that when Federal-aid reimbursement has been made for early acquired real property, the real property must be incorporated into a project eligible for surface transportation funds within the 20-year time period allowed by 23 U.S.C. 108(a)(2). If the State agency does not meet this requirement, FHWA will offset the amount reimbursed against funds apportioned to the State. Offset in this context means a reduction in the States apportionment of title 23 funds. However, a local match refers to the Federal matching requirement on federally funded or assisted project or program funds—*i.e.* the portion of the total project cost that a State or local is required to contribute is commonly called the local match. The use of FHWA funds on a project typically requires a 10 percent or 20 percent local match of funds.

Comment on Relocation Assistance Eligibility—§ 710.501(h)

The AASHTO and GDOT commented that the language in the rule helps to ensure that relocation assistance can be provided at the time early acquisition occurs and need not wait until project construction.

The FHWA appreciates the comment and believes it is important to reiterate that the purpose of this provision is to establish relocation eligibility when there is a binding written agreement between the acquiring agency and the property owner for the early acquisition of the real property interests.

Comments on Protective Buying and Hardship Acquisition—§ 710.503

Two SDOTs and one private citizen commented on this section of the regulation. The ITD commented that the definition of "project" in this section is not clear. They requested clarification of what would need to be in the TIP or whether the early acquisition would need to be in the TIP itself.

The FHWA agrees that the term "transportation project" should be used in this section to clarify which activities the regulation is referring and what must be included in the TIP. The FHWA has revised the regulatory text accordingly. Transportation project as used in this regulation is defined in part as excluding early acquisition projects. In order to request reimbursement of hardship or protective buying costs (referred to as early acquisitions in the question) one of the requirements for this part is that the transportation project be included in the currently approved STIP. Hardship and Protective Buying is not early acquisition as used in this regulation. One private citizen requested that the use of option purchase contracts be added in addition to the protective buying and hardship acquisition approaches. The private citizen believes that this would be consistent with the intent of changes in MAP–21 related to advocating enhanced program delivery initiatives.

The FHWA recognizes the need to enhance program delivery initiatives as established by the expanded definition of real property interests. The expanded definition includes the use of option purchase contracts as a tool to acquire or preserve an interest in land. This rule does allow for the purchase of real property interests which by definition at § 710.105(b) does include options. Therefore, options could be used as a tool to acquire or preserve an interest in land when necessary.

The WisDOT commented that it was pleased that there was a possibility for reimbursement of funds spent on early acquisitions, but were generally concerned about the scope of the requirements of this part and the early acquisition part.

The FHWA believes that this rule balances the need to provide specific requirements for reimbursement against the need to provide flexibility. The FHWA is planning the development of an implementation guide and Frequently Asked Questions, which will address these two topics in more detail.

Comments on Real Property Donations—§ 710.505

The ITD and NYSDOT provided comments on this section. The ITD asked about a timeframe for determining fair market value, citing concerns about frequent changes in the real estate market and project influences on value. Further, it requested that FHWA establish a timeframe for determining fair market value in the regulation.

The FHWA believes the regulatory language in 23 CFR 710.507(b) addresses both questions. Specifically, the language requires that the credit to the State's matching share for donated property be based on fair market value established on the earlier date, either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. Also, the fair market value may not include increases or decreases in value caused by the project.

The NYSDOT commented that it would like language added to § 710.505(a) to ensure that it's clear that Federal and State requirements on property donation must be followed.

The FHWA added "subject to applicable state laws" to this section of the regulatory text. However, FHWA cannot give a blanket approval of State laws, rules, and regulations since there may be some that conflict with Federal law.

Comment on State and Local Contributions—§ 710.507

The NYSDOT raised a question about whether credits for State and local contribution under this regulation would be subject to different rules. It believes the NPRM supports this interpretation because the NPRM stated in part that the provisions for credit for real property interests contributed to a project are not the same for State and local governments. It recommends that the wording in § 710.507 be changed to say that the real property can be used as a credit toward "the State's or local government's matching share."

The FHWA reviewed the NPRM and does not agree that the NPRM preamble creates separate standards for State and local credit. The FHWA notes that the NPRM stated that, "The provisions governing credit for real property interests contributed to a project are now the same for State and local governments." The FHWA agrees that a clarification describing to whom these credit provisions apply would improve the regulation. The FHWA changed the wording in § 710.507 from "State" to "Grantee or Subgrantee" to more clearly describe the party receiving a credit for the State or local government contribution.

Comment on Functional Replacement—§ 710.509

The NYSDOT asked whether local public agencies would be eligible for providing functional replacements if they acquired real property interests from a publicly owned facility unless a State law prohibits it, and whether the SDOT could decide not to provide a functional replacement.

The FHWA holds SDOTs responsible for ensuring that activities by subgrantees (local public agencies in the context of this question), and contractors on Federal-aid projects are carried out in compliance with State and Federal legal requirements. Because SDOTs are responsible for oversight and stewardship of activities carried out by subgrantees (local public agencies in the context of this question), each SDOTs ROW manual must clearly detail the process for considering requests for functional replacements including whether State law, regulation, or policy allow local public agencies to carry out functional replacements.

Comment on Transportation Alternatives (TA)—§ 710.511

On December 4, 2015, the FAST Act was signed into law. The FAST Act eliminated the MAP–21 Transportation Alternatives Program (TAP) and replaced it with a set-aside of Surface Transportation Block Grant (STBG) program funding for transportation alternatives (TA). As a result of these changes, references to the program name in this section of the final rule have been updated so that they are consistent with the FAST Act.

The AASHTO commented on Transportation Alternatives that "States support the provision of having all property subject to the same requirements."

The FHWA agrees that properties on TA projects should be subject to the Uniform Act and Federal-aid highway requirements under title 23.

Comment on Federal Land Transfers—§ 710.601(b) and (e)

The FHWA has made a clarification to § 710.601(b) by adding the phrase ("SDOTs and their Nominees") to the end of this section. The FHWA believes that this will addresses comments which, in part, asked for clarification regarding which entities the regulation was referring to in this section.

The AASHTO, CDOT, PennDOT, and SDDOT all requested that a Federal land management agency (FLMA) should have a maximum period of 4 months, or less, in order to respond to a Federal land transfer request and ensure timely ROW clearance and project delivery.

The FHWA appreciates the importance of timely project delivery while allowing sufficient time for a FLMA to review the request and determine conditions necessary for the adequate protection and utilization of the reserve; or to determine whether the proposed appropriation is contrary to the public interest or inconsistent with the reserved purposes. The FHWA is unable to make the requested change because 23 U.S.C. 317(b) requires 4 months for the FMLA to process the Federal land transfer request. The FHWA believes that the 4-month timeframe is sufficient for the FLMA's review of the request.

Comment on Direct Federal Acquisition—§ 710.603(a)

The WSDOT commented that it believes the word "not" should be removed from the first sentence of this section. "The provisions of this paragraph may be applied to any real property that is ~~not~~ owned by the United States and is . . . ."

The FHWA does not agree that the word "not" should be removed. The authority provided by this section does not allow for condemnation of Federal Government real estate. The authority and process for acquiring real property owned by the Federal Government is provided in the Federal Land Transfers section at § 710.601. The first sentence has not been modified by deleting the word "not."

III. Rulemaking Analyses and Notices

The FHWA considered all comments received before the close of business on the extended comment closing date indicated above, and the comments are available for examination in the docket (FHWA–2014–0026) at *Regulations.gov.* The FHWA also considered comments received after the comment closing date to the extent practicable.

Executive Orders 12866 and 13563 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The FHWA has determined that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 and would not be significant within the meaning of DOT's regulatory policies and procedures (44 FR 11032). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that the economic impact of this rulemaking will be minimal. The changes in this rule are requirements mandated by MAP–21 which add new authorities for early acquisition of property to part 710, and clarify the Federal-aid eligibility of a broad range of real property interests that constitute less than full fee ownership. This final rule also streamlines program requirements, clarifies the Federal-State partnership, and carries out a comprehensive update of part 710. Corresponding revisions have been made to related regulations in 23 CFR parts 635 and 810 to help ensure consistency in interpretation of title 23 requirements, and to better align the language of the regulations with current program needs and best practices. This final rule implements changes identified by the public in response to the DOT's initiative on Implementation of Executive Order 13563, Retrospective Review and Analysis of Existing Rules. The FHWA believes that the streamlining and updating in this final rule will result in a reduction of Federal requirements and will afford the States new flexibilities to more efficiently acquire real property.

The FHWA has had an ongoing dialog with stakeholders and has developed the final rule in a manner that balances stakeholders' concerns and practical implementation issues to allow SDOTs to utilize the new flexibilities while minimizing their effects on existing requirements and procedures. The FHWA believes that this rule is non-controversial due to the scope and nature of the proposed additions and changes to the regulation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this final rule on small entities and anticipates that this action will not have a significant economic impact on a substantial number of small entities which includes SDOTs, LPAs, and other State governmental agencies.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4,109 Stat.48). This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has determined that this final action does not warrant the preparation of a federalism assessment. The FHWA has also determined that this final action would not preempt any State law or State regulation or affect any State's ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175 and believes that this final action does not have substantial direct effects on one or more Indian tribes, does not impose substantial direct compliance costs on tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The FHWA has determined that the final rule action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for collections of information they conduct, sponsor, or require through regulations. The PRA applies to Federal agencies' collections of information imposed on 10 or more persons. "Persons" include a State, territorial, tribal, or local government, or branch thereof, or their political subdivisions.

This action is covered by the existing information collection requirements previously approved under OMB Control Number 2125–0586. The existing information collection is set to expire on September 30, 2016. As required by the PRA, any amendments resulting from this final will be incorporated into the existing information collection when it is renewed prior to expiration in September 2016.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform*, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and DOT Order 5610.2(a) (the DOT Order), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/enviornment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. In addition, FHWA has issued additional documents relating to administration of Executive Order 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (the FHWA Order) (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*).

The FHWA has evaluated this final rule under the Executive Order, the DOT Order, and the FHWA Order. The FHWA has determined that the final rule will not cause disproportionately high and adverse human health and environmental effects on minority or low income populations. This final rule establishes procedures and requirements for grantees and others when acquiring, managing, and disposing of real property interests. The EJ principles, in the context of acquisition, management, and disposition of real property, should be considered during the planning and environmental review processes for the particular proposal. The FHWA will consider EJ when it makes a future funding or other approval decision on a project-level basis.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks.* The FHWA certifies that this final rule will not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this final rule would effect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This final rule adopts policies, procedures, and requirements for acquisition, management, and disposal of real property interests for Federal and federally assisted projects carried out under title 23, U.S.C. The final rule has no potential for environmental impacts until the regulations are applied at the project level. The FHWA would have an obligation to evaluate the potential environmental impacts of such a future project-level action if the action constitutes a major Federal action under NEPA.

This action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and § 771.117(c)(1) (activities that do not lead directly to construction). The FHWA has evaluated whether the final rule would involve unusual circumstances or extraordinary circumstances and has determined that this final rule would not involve such circumstances. As a result, FHWA finds that this final rulemaking would not result in significant impacts on the human environment.

Regulation Identification Number

A Regulation Identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 635

Construction and maintenance, Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 710

Grant programs-transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements, Rights-of-way.

23 CFR Part 810

Grant programs-transportation, Highways and roads, Mass transportation, Rights-of-way.

Issued on: August 8, 2016.

Gregory G. Nadeau,

Administrator.

In consideration of the foregoing, FHWA amends title 23, Code of Federal Regulations, parts 635, 710, and 810 as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

■ 1. The authority citation for part 635 continues to read as follows:

Authority: Sec. 1525 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 2. Section 635.309 is revised to read as follows:

§ 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) have been approved.

(b) A statement is received from the State, either separately or combined with the information required by paragraph (c) of this section, that either all right-of-way (ROW) clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems or the like, there shall be appropriate notification provided in the bid proposals identifying the ROW clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) Except as otherwise provided for design-build projects in § 710.309 of this chapter and paragraph (p) of this section, a statement is received from the State certifying that all individuals and families have been relocated to decent, safe, and sanitary housing or that the State has made available to relocatees adequate replacement housing in accordance with the provisions of the 49 CFR part 24 and that one of the following has application:

(1) All necessary ROW, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the ROW but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary ROW have not been fully acquired, the right to occupy and to use all ROW required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, the State may request the Federal Highway Administration (FHWA) to authorize actions based on a conditional certification as provided in this paragraph.

(i) The State may request approval for the advertisement for bids based on a conditional certification. The FHWA will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before acquisition activities are complete.

(ii) The State may request approval for physical construction under a contract or through force account work based on a conditional certification. The FHWA will approve the request only if FHWA finds there are exceptional circumstances that make it in the public interest to proceed with construction before acquisition activities are complete.

(iii) Whenever a conditional certification is used, the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

(iv) When the State requests authorization under a conditional certification to advertise for bids or to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor, including identification of each such parcel, will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification must be provided in the request for bids, identifying all locations where right of occupancy and use has not been obtained. Prior to the State issuing a notice to proceed with construction to the contractor, the State shall provide an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained along with a realistic date when physical occupancy and use is anticipated.

(v) Participation of title 23 funds in construction delay claims resulting from unavailable parcels shall be determined in accordance with § 635.124. The FHWA will determine the extent of title 23 participation in costs related to construction delay claims resulting from unavailable parcels where FHWA determines the State did not follow approved processes and procedures.

(d) The State transportation department (SDOT), in accordance with 23 CFR 771.111(h), has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C.

112, when construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that ROW has been acquired or will be acquired in accordance with 49 CFR part 24 and part 710 of this chapter, or that acquisition of ROW is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by 49 CFR part 24 have been taken, or that they are not required.

(i) The FHWA has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA has determined that requirements of 23 CFR part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA that the provisions of § 645.119(b) of this chapter have been fulfilled.

(l) The FHWA has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, area wide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231 through 4233.

(n) The FHWA has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*;) (Uniform Act).

(p) In the case of a design-build project, the following certification requirements apply:

(1) The FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (*See* § 636.109 of this chapter).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the SDOT that either all ROW, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of ROW, utility, and railroad work.

(vi) If the SDOT elects to include ROW, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:

(A) A statement concerning scope and current status of the required services or, in the case of right-of-way work, a certification in accordance with § 710.309(d)(1) of this chapter; and

(B) A statement which requires compliance with the Uniform Act, 23 CFR part 710, and the acquisition processes and procedures are in the FHWA-approved ROW manual.

(2) During a conformity lapse, an Early Acquisition Project carried out in accordance with § 710.501 of this chapter or a design-build project (including ROW acquisition activities) may continue if, prior to the conformity lapse, the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) process was completed and the project has not changed significantly in design scope, FHWA authorized the early acquisition or design-build project, and the project met transportation conformity requirements (40 CFR parts 51 and 93).

(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

■ 3. The authority citation for part 710 is revised to read as follows:

Authority: Secs.1302 and 1321, Pub. L. 112–141, 126 Stat. 405. Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 2 CFR 200.311; 49 CFR 1.48(b) and (cc), parts 21 and 24; 23 CFR 1.32.

■ 4. Revise subparts A through F to read as follows:

Subpart A—General

Sec.

710.101 Purpose.
710.103 Applicability.
710.105 Definitions.

Subpart B—Program Administration

710.201 Grantee and subgrantee responsibilities.
710.203 Title 23 funding and reimbursement.

Subpart C—Project Development

710.301 General.
710.303 Project authorization and agreements.
710.305 Acquisition.
710.307 Construction advertising.
710.309 Design-build projects.

Subpart D—Real Property Management

710.401 General.
710.403 Management.
710.405 ROW use agreements.
710.407 [Reserved]
710.409 Disposal of excess real property.

Subpart E—Property Acquisition Alternatives

710.501 Early acquisition.
710.503 Protective buying and hardship acquisition.
710.505 Real property donations.
710.507 State and local contributions.
710.509 Functional replacement of real property in public ownership.
710.511 Transportation Alternatives.

Subpart F—Federal Assistance Program

710.601 Federal land transfers.
710.603 Direct Federal acquisition.

Subpart A—General

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23, United States Code, in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

(a) This part applies whenever title 23, United States Code, grant funding is used, including when grant funds are expended or participate in project costs incurred by the State or other Title 23 grantee. This part applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in this part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, including this part.

(b) The parties responsible for ROW and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this part, the FHWA identifies the parties subject to a particular provision through the use of terms of reference defined as set forth in § 710.105. It is important to refer to those definitions, such as "State Department of Transportation (SDOT)," "grantee," "subgrantee," "State agency" and "acquiring agency," when applying the provisions in this part.

(c) Where title 23 funds are transferred to other Federal agencies to administer, those agencies' ROW and real estate procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate Services Web site: *http://www.fhwa.dot.gov/realestate/index.htm.*

§ 710.105 Definitions.

(a) Terms defined in 23 U.S.C. 101(a) and 49 CFR part 24 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

Access rights mean the right of ingress to and egress from a property to a public way.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

Acquisition means activities to obtain an interest in, and possession of, real property.

Damages means the loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

Disposal means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in § 710.403(b) of this part. The term "disposal" includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

Donation means the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

Early Acquisition Project means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501 of this part. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

Easement means an interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

Federal-aid project means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in chapter 1 of title 23, United States Code.

Federally assisted means a project or program that receives grant funds under title 23, United States Code.

Grantee means the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

Mitigation property means real property interests acquired to mitigate for impacts of a project eligible for funding under title 23.

Option means the purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

Person means any individual, family, partnership, corporation, or association.

Real Estate Acquisition Management Plan (RAMP) means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 projects or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

Real property or *real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms "real property" and "real property interest" are synonymous unless otherwise specified.

Relinquishment means the conveyance of a portion of a highway ROW or facility by a grantee under title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See part 620, subpart B of this chapter.)

Right-of-way (ROW) means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

ROW manual means an operations manual that establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with § 710.201(c).

ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A *legal settlement* is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

State agency means: A department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State department of transportation (SDOT) means the State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned.

Stewardship/Oversight Agreement means the written agreement between the SDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Subgrantee means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.

Temporary development restriction means the purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

Transportation project means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used in this part, the term "transportation project" does not include an Early Acquisition Project as defined in this section.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

§ 710.201 Grantee and subgrantee responsibilities.

(a) *Program oversight.* States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by the SDOT's subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.

(b) *Organization.* Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.

(c) *ROW manual.* (1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) to meet the requirements in this paragraph; however, the ROW manual options can only be used with SDOT approval and permission. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.

(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:

(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than August 23, 2018.

(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.

(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *ROW manual alternatives.* Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the following methods:

(1) Certification in writing that the acquiring agency will adopt and use the FHWA-approved SDOT ROW manual;

(2) Submission of the acquiring agency's own ROW manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or

(3)(i) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.

(ii) Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.

(e) *Record keeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:

(i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or

(ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under § 710.501.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.

(f) *Procurement.* Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.

(g) *Use of other public land acquisition organizations, conservation organizations, or private consultants.* The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

(h) *Assignment of FHWA approval actions to an SDOT.* The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

§ 710.203 Title 23 funding and reimbursement.

(a) *General conditions.* Except as otherwise provided in § 710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with title 23 grant funds if the following conditions are satisfied:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The grantee has executed a project agreement or other agreement recognized under title 23 reflecting the Federal funding terms and conditions for the project;

(3) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in § 646.204 of this chapter, prior to completion of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) review, while other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in § 710.501, early acquisition; and in § 710.503 for protective buying and hardship acquisition; and

(4) Costs have been incurred in conformance with State and Federal requirements.

(b) *Direct eligible costs.* Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in § 710.203(d) or specifically provided by statute. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;

(ii) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;

(iii) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights-of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (b)(5) of this section);

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA;

(v) The cost of minimum payments and waiver valuation amounts included in the approved ROW manual or approved RAMP; and

(vi) Ordinary and reasonable costs associated with closing, and costs of finalizing the acquisition.

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

(i) Relocation assistance and payments required under 49 CFR part 24; and

(ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses.* Salary and related expenses (compensation for personal services) of employees of an acquiring agency for work on a project funded by a title 23 grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A–87), as are salary and related expenses of a grantee's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.

(6) *Property not incorporated into a project funded under title 23, United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives (TA) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing; and

(ii) *Easements and alternate access not incorporated into the ROW.* The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing road or highway (*i.e.,* one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an acquiring agency for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, subpart B, Railroad-Highway Projects; and

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A–87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-SDOT personnel.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process typically are planning, environmental review, project agreement/authorization, acquisition, construction advertising, and construction.

§ 710.303 Project authorization and agreements.

As a condition of Federal funding under title 23, the grantee shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early acquisitions under § 710.501(e) and hardship acquisition and protective buying under § 710.503. For projects funded under chapter 1, title 23, United States Code, the grantee must prepare a project agreement in accordance with 23 CFR part 630, subpart A. Authorizations and agreements shall be based on an acceptable estimate for the cost of acquisition.

§ 710.305 Acquisition.

(a) *General.* The process of acquiring real property includes appraisal, appraisal review, waiver valuations, establishing estimates of just compensation, negotiations, relocation assistance, administrative and legal settlements, and court settlements and condemnations. Grantees must ensure all acquisition and related relocation assistance activities are performed in accordance with 49 CFR part 24 and this part. If a grantee does not directly own the real property interests used for a title 23 project, the grantee must have an enforceable subgrant agreement or other agreement with the owner of the ROW that permits the grantee to enforce applicable Federal requirements affecting the real property interests, including real property management requirements under subpart D of this part.

(b) *Adequacy of real property interest.* The real property interests acquired for any project funded under title 23 must be adequate to fulfill the purpose of the project. Except in the case of an Early Acquisition Project, this means adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public.

(c) *Establishment and offer of just compensation.* The amount believed to be just compensation shall be approved by a responsible official of the acquiring agency. This shall be done in accordance with 49 CFR 24.102(d).

(d) *Description of acquisition process.* The acquiring agency shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and this part, and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English in accordance with 49 CFR 24.5, 24.102(b), and 24.203.

§ 710.307 Construction advertising.

(a) The grantee must manage real property acquired for a project until it is required for construction. Except for properties acquired under the early acquisition provisions of 23 CFR 710.501(e), clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. The grantee shall develop ROW availability statements and certifications related to project acquisitions as described in 23 CFR 635.309.

(b) The FHWA–SDOT Stewardship/Oversight Agreement will specify SDOT responsibility for the review and approval of the ROW availability statements and certifications in accordance with applicable law. Generally, for non-National Highway System projects, the SDOT has full responsibility for determining that right-of-way is available for construction. For non-SDOT grantees, FHWA will be responsible for the review and approval.

§ 710.309 Design-build projects.

(a) In the case of a design-build project, ROW must be acquired and cleared in accordance with the Uniform Act and the FHWA-approved ROW manual or RAMP, as provided in § 710.201(c) and (d). The grantee shall submit a ROW certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. The grantee shall ensure that ROW is available prior to the start of physical construction on individual properties.

(b) The decision to advance a ROW segment to the construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project ROW.

(c) The grantee may choose not to allow construction to commence until all property is acquired and relocations have been completed; or, the grantee may permit the construction to be phased or segmented to allow ROW activities to be completed on individual properties or a group of properties, with ROW certifications done in a manner satisfactory to the grantee for each phase or segment.

(d) If the grantee elects to include ROW services within the design-builder's scope of work for the design-build contract, the following provisions must be addressed in the request for proposals document:

(1) The design-builder must submit written certification in its proposal that it will comply with the process and procedures in the FHWA-approved ROW manual or RAMP as provided in § 710.201(c) and (d).

(2) When relocation of displaced persons from their dwellings has not been completed, the grantee or design-builder shall establish a hold off zone around all occupied properties to ensure compliance with ROW procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the grantee prior to the design-builder entering onto the property. There should be no construction-related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the grantee prior to entering the hold off zone.

(3) Contractors activities must be limited to those that the grantee determines do not have a material adverse impact on the quality of life of those in occupied properties that have been or will be acquired.

(4) The grantee will provide a ROW project manager who will serve as the first point of contact for all ROW issues.

(e) If the grantee elects to perform all ROW services relating to the design-build contract, the provisions in § 710.307 will apply. The grantee will notify potential offerors of the status of all ROW issues in the request for proposal document.

Subpart D—Real Property Management

§ 710.401 General.

This subpart describes the grantee's responsibilities to control the use of real property acquired for a project in which Federal funds participated in any phase of the project. The grantee shall specify in its approved ROW manual or RAMP, the procedures for the maintenance, ROW use agreements, and disposal of real property interests acquired with title 23 funds. The grantee shall ensure that subgrantees, including local agencies, follow Federal requirements and approved ROW procedures as provided in § 710.201(c) and (d).

§ 710.403 Management.

(a) As provided in § 710.201(h), FHWA and SDOT may use their Stewardship/Oversight Agreement to enter into a written agreement establishing which approvals the SDOT may make on behalf of FHWA, provided FHWA may not assign to the SDOT the decision to allow any ROW use agreement or any disposal on or within the approved ROW limits of the Interstate, including any change in access control. The assignment agreement provisions in § 710.201(h) and this paragraph do not apply to non-SDOT grantees.

(b) The grantee must ensure that all real property interests within the approved ROW limits or other project limits of a facility that has been funded under title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under § 710.405 or permanent as provided in § 710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). Park and Ride lots are exempted from the provisions of this part. Park and Ride lots requirements are found 23 U.S.C. 137 and 23 CFR 810.106.

(c) Grantees shall specify procedures in their approved ROW manual or RAMP for determining when a real property interest is excess real property and may be disposed of in accordance with this part. These procedures must provide for coordination among relevant State organizational units that may be interested in the proposed use or disposal of the real property. Grantees also shall specify procedures in their ROW manual or RAMP for determining when a real property interest is excess and when a real property interest may be made available under a ROW use agreement for an alternative use that satisfies the requirements described in paragraph (b) of this section.

(d) Disposal actions and ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by railroads in accordance with 23 CFR part 646.

(4) Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Uses under 23 U.S.C. 142(f), Public Transportation. Lands and ROWs of a highway constructed using Federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

(6) Use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in § 710.703, shall not constitute a transportation project exempt from fair market value requirements.

(f) The Federal share of net income from the use or disposal of real property interests obtained with title 23 funds shall be used by the grantee for activities eligible for funding under title 23. Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered Federal financial assistance and use of the income does not cause title 23 requirements to apply.

§ 710.405 ROW use agreements.

(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with § 710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in § 710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

(1) This section applies to highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

(2) This section does not apply to the following:

(i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;

(ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and

(iii) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) Subject to the requirements in this subpart, ROW use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the ROW of a federally assisted highway to permit the non-highway use. A ROW use agreement must contain provisions that address the following items:

(1) Ensure the safety and integrity of the federally assisted facility;

(2) Define the term of the agreement;

(3) Identify the design and location of the non-highway use;

(4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;

(5) Provide for adequate insurance to hold the grantee and the FHWA harmless;

(6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

(9) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at *http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm.* The terms and conditions listed in the guidance are not mandatory requirements.

(c) Where a proposed use requires changes in the existing highway, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the grantee and FHWA.

(d) Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

(e) An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, and the SDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed ROW use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

(1) Identification of the party responsible for developing and operating the proposed use;

(2) A general statement of the proposed use;

(3) A description of why the proposed use would be in the public interest;

(4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;

(5) The proposed design for the use of the space, including any facilities to be constructed;

(6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;

(7) Provision for vertical and horizontal access for maintenance purposes;

(8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and

(9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

§ 710.407 [Reserved]

§ 710.409 Disposal of excess real property.

(a) Excess real property outside or within the approved right-of-way limits or other project limits may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(a), (c), (d), (e), (f) and this section. Approval by FHWA is required for disposal of excess real property unless otherwise provided in this section or in the FHWA–SDOT Stewardship/Oversight Agreement.

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the grantee shall notify the appropriate agencies of its intentions to dispose of the real property interests determined to be excess.

(c) The grantee may decide to retain excess real property to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of excess real property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under § 710.403(e), the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value, no reversion clause is required.

(e) No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did not participate in the acquisition cost of the real property.

(f) Highway facilities in which Federal funds participated in either the ROW or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR part 620, subpart B.

(g) A request for approval of a disposal must demonstrate compliance with the requirements of § 710.403(a), (c), (d), (e), (f) and this section. An individual, company, organization, or public agency requesting a grantee to approve of a disposal of excess real property within the approved ROW limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to the grantee, together with an application supporting the proposal. If the FHWA is the approving authority, the grantee shall forward the request, the SDOT recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to requirements contained in this section and must include the information specified in § 710.405(e)(1) through (9).

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *General.* A State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The State agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, State agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

(b) *State-funded early acquisition without Federal credit or reimbursement.* A State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of § 710.501(c)(1) through (5).

(c) *State-funded early acquisition eligible for future credit.* Subject to § 710.203(b) (direct eligible costs), § 710.505(b), and § 710.507 (State and local contributions), Early Acquisition Project costs incurred by a State agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

(1) The property was lawfully obtained by the State agency;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;

(4) The State agency complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4);

(5) The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:

(i) The decision on need to construct the proposed transportation project;

(ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and

(iii) The selection of the design or location for the proposed transportation project; and

(6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

(d) *State-funded early acquisition eligible for future reimbursement.* Early Acquisition Project costs incurred by a State agency prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of § 710.501(c)(1) through (5), and the requirements of § 710.203(b) (direct eligible costs) have been met. The State agency must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. 108(c)(3):

(1) Any land acquired, and relocation assistance provided, complied with the Uniform Act;

(2) The requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(3) The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(4) The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;

(5) The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(6) Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

(7) Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(e) *Federally funded early acquisition.* The FHWA may authorize the use of funds apportioned to a State under title 23 for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

(1) The State has authority to acquire the real property interest under State law; and

(2) The acquisition of the real property interest—

(i) Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3;

(ii) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;

(iii) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;

(iv) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

(v) Is consistent with the State transportation planning process under 23 U.S.C. 135;

(vi) Complies with other applicable Federal laws (including regulations);

(vii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and

(viii) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

(4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

(f) *Prohibited activities.* Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, "development in anticipation of a transportation project" means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a State agency may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

(g) *Reimbursement.* If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.

(h) *Relocation assistance eligibility.* In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to final environmental approval of a transportation project, the grantee may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The transportation project is included in the currently approved STIP;

(2) The grantee has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property interest subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to (54 U.S.C. 306108), (historic properties).

(b) *Protective buying.* The grantee must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The grantee must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that—

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section is subject to environmental review under part 771 of this chapter. Acquisitions under this section shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

§ 710.505 Real property donations.

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a title 23 project may donate the property. Donations may be made at any time during the development of a project subject to applicable State laws. Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable State law. All donations of property received prior to the approval of the NEPA document for the project must meet the requirements specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project in accordance with 23 U.S.C. 323. As required by 23 U.S.C. 323(b)(2), credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: Either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. The grantee shall ensure sufficient documentation is developed to indicate compliance with paragraph (a) of this section and with the provisions of 23 U.S.C. 323, and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) *Credit for State and local government contributions.* If the requirements of 23 U.S.C. 323 are met, real property owned by State and local governments that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the grantee or subgrantee's matching share of total project cost. A credit cannot exceed the grantee or subgrantee's matching share required by the project agreement. The grantee must ensure there is documentation supporting all credits, including the following:

(1) A certification that the State or local government acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State or local government to acquire title can be used as justification for the value of the real property.

(b) *Exemptions.* Credits are not available for real property acquired with any form of Federal financial assistance except as provided in 23 U.S.C. 120(j), or for real property already incorporated into existing ROW and used for transportation purposes.

(c) *Contributions without credit.* Property may be presented for project use with the understanding that no credit for its use is sought. In such case, the grantee shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6).

§ 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership and use;

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are—

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation Alternatives.

(a) *General.* 23 U.S.C. 133(h) sets aside an amount from each State's Surface Transportation Block Grant apportionment for Transportation Alternatives (TA). The TA projects that involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified in paragraph (b)(2) of this section.

(b) *Requirements.* (1) Acquisition and relocation activities for TA projects are subject to the Uniform Act.

(2) When a person or agency acquires real property for a project receiving title 23 grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.

(3) When, subsequent to Federal approval of property acquisition, a person or agency acquires real property for a project receiving title 23 grant funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(b)(2) apply.

(c) *Property management and disposal of property acquired for TA projects.* Subpart D of this part applies to the management and disposal of real property interests acquired with TA funds, including alternate uses authorized under ROW use agreements. A TA project involving acquisition of any real property interest must have a real property agreement between FHWA and the grantee that identifies the expected useful life of the TA project and establishes a pro rata formula for repayment of TAP funding by the grantee if—

(1) The acquired real property interest is used in whole or in part for purposes other than the TA project purposes for which it was acquired; or

(2) The actual TA project life is less than the expected useful life specified in the real property agreement.

Subpart F—Federal Assistance Programs

§ 710.601 Federal land transfers.

(a) The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, 104 Stat. 1808, as amended).

(b) Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers (SDOTs and their nominees).

(c) An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (54 U.S.C. 306108), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.

(f) The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

(g) Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.

(h) Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.

(i) When the need for the interest acquired under this subpart no longer exists, the party that received the real property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land management agency that such interest will immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this paragraph may not be applied to any real property that is owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations that have been conducted with landowners;

(9) An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act.

(b) Except as provided in paragraph (a) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

(c) If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(d) When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects; and

(8) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(e) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(f) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(g) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed.

(h) The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

■ 5. Revise § 710.703(f) to read as follows:

§ 710.703 Definitions.

* * * * *

(f) *Highway agency* in this subpart means any SDOT or other public authority with jurisdiction over a federally funded highway.

* * * * *

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

■ 6. The authority citation for part 810 continues to read as follows:

Authority: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97–134, 95 Stat. 1699; secs. 118, 120, and 163 of Pub. L. 97–424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

■ 7. Revise § 810.212 to read as follows:

§ 810.212 Use without charge.

The use and occupancy of the lands made available by the State to the publicly owned transit authority may be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly owned mass transit authority.

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Vol. 81, No. 163

Tuesday, August 23, 2016

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FEDERAL REGISTER PAGES AND DATE, AUGUST

50283–50604	1
50605–51074	2
51075–51296	3
51297–51772	4
51773–52320	5
52321–52588	8
52589–52740	9
52741–52968	10
52969–53244	11
53245–53906	12
56907–54476	15
54477–54708	16
54709–55104	17
55105–55350	18
55351–56470	19
56471–57438	22
57439–57742	23

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

9473 ... 52965

Executive Orders:

13246 (revoked by EO 13735) ... 54709
13247 (revoked by EO 13736) ... 54711
13261 Section 4(g) (revoked by EO 13736) ... 54711
13614 (revoked by EO 13737) ... 54713
13675 (amended by 13734) ... 52321
13734 ... 52321
13735 ... 54709
13736 ... 54711
13737 ... 54713

Administrative Orders:

Notices:
Notice of August 4, 2016 ... 52587
Memorandums:
Memorandum of March 19, 2002 (revoked by EO 13735 and 13736) ... 54711
Memorandum of February 12, 2003 (revoked by EO 13736) ... 54711
Memorandum of July 26, 2016 ... 51773
Memorandum of August 1, 2016 ... 55105
Memorandum of August 3, 2016 ... 52323
Memorandum of August 5, 2016 ... 52967
Memorandum of August 5, 2016 ... 55109
Memorandum of August 12, 2016 (Office of Personnel Management) ... 54715
Memorandum of August 12, 2016 (National Endowment for the Humanities) ... 54717
Presidential Determinations:
No. 2016–09 of August 4, 2016 ... 55107

5 CFR

630 ... 51775

6 CFR

Proposed Rules:

5 ... 52593

7 CFR

37 ... 52589
51 ... 51297
59 ... 52969
205 ... 51075
400 ... 53658
457 ... 52590
761 ... 51274
762 ... 51274
763 ... 51274
764 ... 51274
765 ... 51274
766 ... 51274
767 ... 51274
770 ... 51274
772 ... 51274
773 ... 51274
774 ... 51274
799 ... 51274
981 ... 54719
986 ... 51298
996 ... 50283
1150 ... 53245
1205 ... 51781
1436 ... 51274
1940 ... 51274
3560 ... 57439
4279 ... 54477
4287 ... 54477

Proposed Rules:

319 ... 51381, 53334
906 ... 54748
922 ... 57493
929 ... 51383
948 ... 50406
983 ... 54520
1260 ... 57495

8 CFR

274a ... 57442

9 CFR

56 ... 53247
77 ... 52325
145 ... 53247
146 ... 53247
147 ... 53247

Proposed Rules:

1 ... 51386
2 ... 51386
3 ... 51386

10 CFR

20 ... 52974
72 ... 57442
429 ... 55111
430 ... 54721, 55111, 56471
431 ... 53907

Proposed Rules:

72 ... 57497
429 ... 51812, 53961, 54926
430 ... 52196, 53962, 55155,

57374
431 ....51812, 53961, 54926
820 53337
951 51140

12 CFR

45 50605
237 50605
349 50605
624 50605
1221 50605
1806 52741

Proposed Rules:

3 55381
34 51394
47 55381
50 55381
213 51400
226 ....51394, 51404
1013 51400
1026 ....51394, 51404, 54318
1272 57499

13 CFR

126 51312

Proposed Rules:

115 52595
120 52595

14 CFR

13 51079
25 ....51081, 51084, 51086, 51090, 51093, 51095, 55351, 56472, 56474, 56475
39 ....51097, 51314, 51317, 51320, 51323, 51325, 51328, 51330, 52750, 52752, 52755, 52758, 52975, 53252, 53255, 54908, 55353, 55358, 55362, 55366, 57447, 57449
71 ....50613, 52761, 52762, 52991, 52992, 53262, 53263, 53264, 53265, 53912, 53913, 53915, 55371
91 50615
97 ....51332, 51334, 51337, 51339
383 52763
406 51079
440 ....54721, 55115

Proposed Rules:

39 ....51142, 51813, 51815, 51818, 51821, 54750, 56538, 56540
71 ....52369, 53091, 53093, 53342, 53962, 53964, 54752

15 CFR

744 ....55372, 57451
758 54721
774 52326
902 54390

Proposed Rules:

740 57505

16 CFR

Proposed Rules:

Ch. II 51824
259 52780
1308 54754

17 CFR

1 ....53266, 54478
3 54478
23 54478
37 54478
43 54478
45 54478
46 54478
170 54478
242 53546

Proposed Rules:

3 ....51824, 53343
4 51828
210 51608
229 51608
230 51608
239 51608
240 51608
249 51608
274 51608

18 CFR

35 50290
154 51100
1312 54498

Proposed Rules:

35 51726

19 CFR

12 ....53916, 57456
163 57456
165 56477
351 50617

Proposed Rules:

12 54763

20 CFR

404 51100
603 56072
620 50298
651 56072
652 56072
653 56072
654 56072
658 56072
675 56072
676 55792
677 55792
678 55792
679 56072
680 56072
681 56072
682 56072
683 56072
684 56072
685 56072
686 56072
687 56072
688 56072

Proposed Rules:

404 ....51412, 54520
416 54520

21 CFR

11 ....50303, 54499
16 52994
20 54960
25 54960
101 ....50303, 54499, 54501
170 54960
184 54960
186 54960
514 52995
570 54960
610 52329
1105 52329
1301 53846

Proposed Rules:

Ch. II 53688, 53767
175 52370
176 52370
177 52370
178 52370
1105 52371

22 CFR

120 54732
123 54732
124 54732
125 54732
126 54732
239 50618

23 CFR

635 57716
710 57716
810 57716

24 CFR

291 52998

Proposed Rules:

30 53095
206 53095
Ch. IX 57506

25 CFR

Proposed Rules:

30 54768

26 CFR

1 ....54721, 55133, 57458, 57459
300 52766
301 ....51795, 55133
602 55133

Proposed Rules:

1 ....50657, 50671, 51413
25 51413
300 56543
301 ....50657, 50671, 51835

27 CFR

9 ....56490, 56492

28 CFR

35 53204
36 53204

Proposed Rules:

0 53965
31 52377
32 57348
44 53965

29 CFR

1926 53268
4022 53921

Proposed Rules:

70 54770

30 CFR

1241 50306

Proposed Rules:

250 53348

32 CFR

237a 53922
505 52767
706 54737
1911 52591

33 CFR

100 ....50319, 50621, 53269, 54739, 55374
101 57652
103 57652
104 57652
105 57652
106 652
117 ....50320, 50621, 52335, 52769, 53270, 53271, 54741, 56504, 56505
165 ....50622, 51798, 51801, 52335, 52339, 52769, 53004, 53922, 55146, 55374, 56506, 57459

Proposed Rules:

110 54531
165 57507
334 52781

34 CFR

Ch. II 52341
Ch. III 50324, 53271
36 50321
361 ....55630, 55792
363 55630
367 55562
369 55562
370 55562
371 55562
373 55562
376 55562
377 55562
379 55562
381 55562
385 55562
386 55562
387 55562
388 55562
389 55562
390 55562
396 55562
397 55630
461 55526
462 55526
463 ....55526, 55792
472 55630
477 55630
489 55630
490 55630

36 CFR

242 52528

Proposed Rules:

7 56550

37 CFR

Proposed Rules:

370 52782

38 CFR

21 52770

Proposed Rules:

4 53353
17 51836

39 CFR

230 50624

Proposed Rules:

3001 51145

40 CFR

50 53006
51 50330
52 ....50336, 50339, 50342, 50348, 50351, 50353, 50358, 50360, 50362, 50626, 50628, 51341, 53008, 53280, 53284, 53290, 53294, 53297, 53300,

53308, 53309, 53924, 53926, 53929, 54502, 54504, 54506, 54742, 56508, 56512, 57461, 57463, 57466, 57469
56....51102
60....52346, 52778
63....51114, 52346, 52348
87....54422
97....50630
180....50630, 52348, 53012, 53019, 53931, 54510
257....51802
271....53025
300....53311
1068....54422

Proposed Rules:
50....53097
51....50408
52....50409, 50415, 50416, 50426, 50427, 50428, 50430, 52388, 53098, 53362, 53365, 53370, 53378, 53978, 54532, 54780, 55156, 55402, 56555, 56556, 57509, 57519, 57522, 57531, 57534, 57535, 57544
63....51145
122....50434
152....51425
162....51425
166....51425
180....53379
257....51838
271....53100
300....53380
745....52393

41 CFR
74....55148

Proposed Rules:
Appendix C to Ch. 301....53979
304....53979
305....53979
306....53979

42 CFR
405....51116, 56762
412....52056, 56762
413....51970, 56762
418....52144
424....51116, 51120
455....51116, 51120
489....56762

Proposed Rules:
10....53381
70....54230
71....54230
88....55086
402....57554
405....52783
410....52783
411....52783
413....51147
414....51147, 52783
417....52783
420....57554
422....52783
423....52783, 54666
424....52783
425....52783
447....53980
455....57554
460....52783, 54666
494....51147
510....50794
512....50794

43 CFR
10....52352

44 CFR
10....56514
60....56514
64....51808, 52353, 55149, 55150
78....56514
79....56514
80....56514
206....56514
209....56514

Proposed Rules:
9....56558, 57402

45 CFR
144....53031
147....53031
153....53031
154....53031
155....53031
156....53031
158....53031
Ch. IX....53033

46 CFR

Proposed Rules:
28....53986
501....53986
530....56559
531....56559
535....53986

47 CFR
0....55316
1....52354
4....52354
11....53039
25....55316
79....55152, 57473

Proposed Rules:
4....55161
9....55161
20....55161
54....54018, 55166
97....53388

48 CFR
202....50635
212....50635
213....53045
218....53045
225....50650
242....50635
245....50652
246....50635
252....50635, 50650, 50652
609....51125
649....51125
1816....50365
1852....50365

Proposed Rules:
202....53101
212....50652, 53101
215....53101
234....53101
239....53101
246....50680
252....50680, 53101
Ch. 7....55405
701....55405
722....55405
752....56572
1801....54783
1815....54783
1852....54783

49 CFR
40....52364
173....53935
179....53935
192....54512
195....54512
270....53850
665....50367
670....53046
1002....50652
1040....51343

Proposed Rules:
269....56574
391....52608
1109....51147
1144....51149
1145....51149
1247....52784
1248....52784

50 CFR
17....51348, 51550, 53315, 55058, 55266
18....52276
20....54514
32....52248, 55153
36....52248
100....52528
216....51126, 54390
219....53061
224....50394
300....50401, 51126
600....51126
622....51138, 52366
635....51810, 55376
648....51370, 51374, 52366, 53958, 54518, 54519, 54744, 56534, 56535, 56536
660....51126, 57489
679....50404, 50405, 51379, 51380, 52367, 52779, 57491

Proposed Rules:
Ch. II....51426
Ch. III....51426
Ch. IV....51426
Ch. V....51426
Ch. VI....51426
17....52796, 54018
20....53391
28....56575
29....56575
229....54019
300....55408
622....53109
635....51165
648....54533, 55166
679....50436, 50444, 52394, 55408

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 4, 2016

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